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ABSTRACT

This document presents a program evaluation report of the Minnesota State High School League, a nonprofit corporation that is a voluntary association of public and private high schools. Member schools delegate control of certain extracurricular activities to the League and, in turn, the League administers athletic and fine arts programs and competitions and establishes student eligibility rules. It is not a state agency, though in the last decade, the state legislature has shown continuing interest in its activities. This study focused on changes that have occurred since the 1987 evaluation of the League, state laws that govern the League's operation and how they compare with those governing state agencies, and changes needed to make the League more accountable to the legislature, students, parents, member schools, and the public. The study compared the League's bylaws and policies with various public accountability laws governing state agencies; examined League practices; talked with staff and board members from the League and officials from state agencies with oversight responsibilities; interviewed representatives from student, parent, and school organizations; and examined how other states have organized similar activities. A summary of the report precedes chapter 1. Chapter 1 presents background information. Chapter 2 discusses results related to public accountability. Chapter 3 presents results related to alternative structures. Agency responses are included. (SM)

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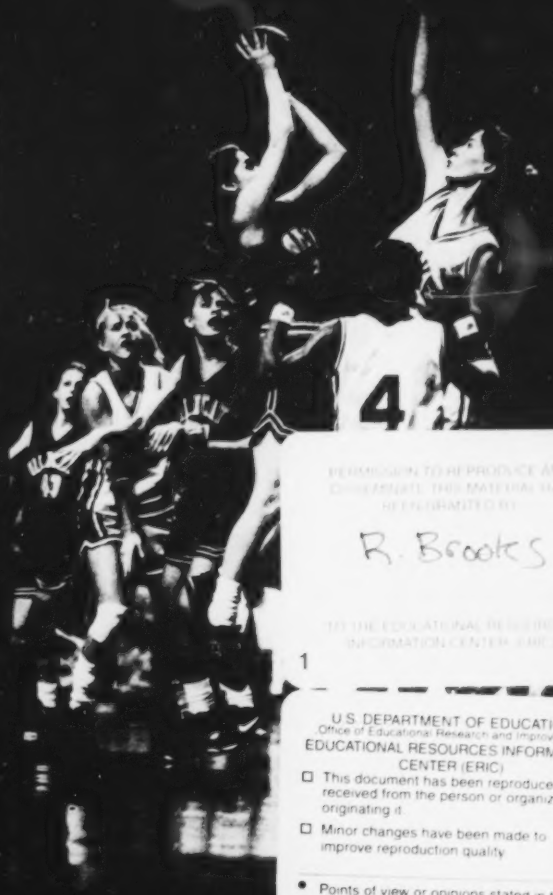
Minnesota State High School League

June 1998

A Program Evaluation Report



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The division conducts a variety of studies for the Legislature: *program reviews*, which describe state programs; *program evaluations*, which examine whether programs are implemented efficiently and achieving results; *performance report reviews*, which assess state agency performance reporting; and *best practices reviews*, which identify the most efficient and effective methods of service delivery. The division also conducts follow-up studies and updates previous research findings.

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Minnesota State High School League

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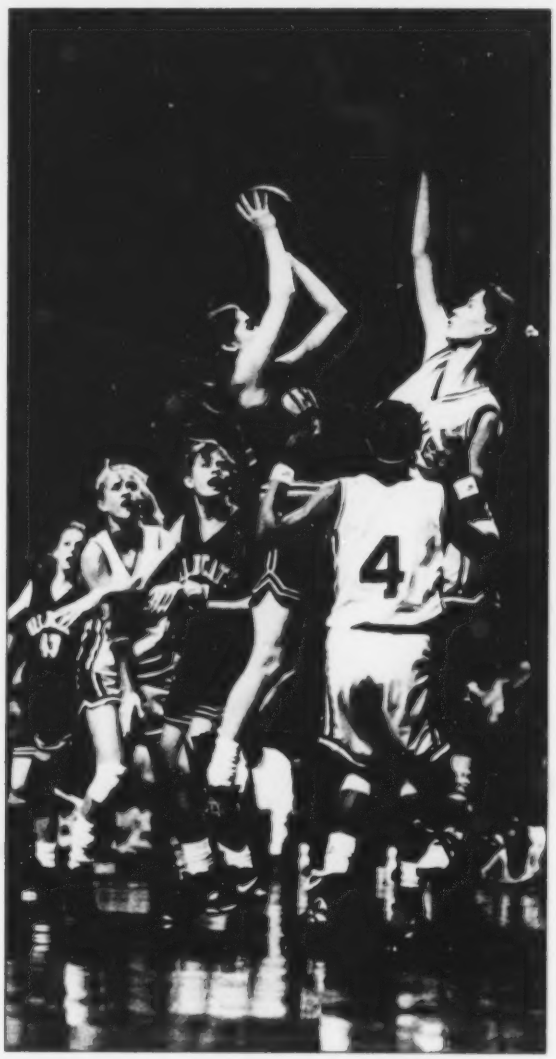

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STATE OF MINNESOTA
OFFICE OF THE LEGISLATIVE AUDITOR
JAMES R. NOBLES, LEGISLATIVE AUDITOR

June 18, 1998

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The Minnesota State High School League is a non-profit voluntary association of schools. But its power to regulate student activities gives it an authority closely akin to government and creates high expectations that, like government, it will be accountable to the public.

In the 1980s there was legislative concern about the management of the League's internal operations and finances. An evaluation by our office identified several management weaknesses, and the Legislature subsequently enacted numerous reforms that strengthened the League's accountability structure.

Responding to continuing legislative concerns about the League, in May 1997 the Legislative Audit Commission directed us to re-examine the League, focusing particularly on its accountability structure, its policy making processes, and the legal framework within which it operates.

Although we found several minor problems, such as a lack of competitive bidding for some purchasing decisions, inconsistency in some League rules and bylaws, and an underutilization of its ombudsperson program, the League has made major progress in addressing the issues identified in the past. We found no significant problems with its rulemaking process and compliance with state laws. Also, most of the League's constituent groups reported that they are satisfied with its overall methods of operation. Nevertheless, we recommend strengthening the authority of the Department of Children, Families, and Learning to oversee the activities of the League to ensure that the League remains accountable to its diverse constituencies and the public. We also recommend giving the State Auditor greater discretion in conducting financial audits of the League and requiring that all League board members begin their terms on August 1.

We received the full cooperation of the League and the Department of Children, Families, and Learning in conducting our evaluation. This report was researched and written by Jo Vos (project manager), David Chein, Steve Coleman, and Carrie Meyerhoff.

Sincerely,

James Nobles
Legislative Auditor

Roger Brooks
Deputy Legislative Auditor

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Minnesota State High School League

SUMMARY

The Minnesota State High School League is a "nonprofit corporation that is a voluntary association" of public and private high schools.[1] Member schools delegate control of certain extracurricular activities to the League and, in turn, the League administers athletic and fine arts programs and competitions and establishes student eligibility rules.

Although the League is not a state agency, over the last ten years, the Legislature has shown continuing interest in its activities. In the late 1980s and early 1990s, concern was most strongly focused on financial issues at the League. Two studies by the Legislative Auditor's Office, annual financial and compliance audits by the State Auditor's Office, and a local newspaper investigation all documented questionable financial policies, procedures, and practices. The Legislature responded by enacting legislation that required the League to implement reforms to increase public accountability and curb financial irregularities.

The League is incorporated as a voluntary, nonprofit association of schools.

Yet, questions about the League's activities have persisted. In May 1997, the Legislative Audit Commission again directed us to evaluate the Minnesota State High School League. Our study focused on the following major research questions:

- **What changes have occurred since our 1987 evaluation of the Minnesota State High School League?**
- **What state laws govern the League's operation and how do they compare with those governing state agencies?**
- **Are changes needed to make the League more accountable to the Legislature, students, parents, member schools, and the public?**

To answer these questions, we compared the Minnesota State High School League's bylaws and policies with various public accountability laws that govern state agencies. We also examined League practices, especially in areas where the League is not subject to state law or where issues were raised by legislators or staff. We talked with staff and board members from the League and officials from state agencies with oversight responsibilities. We also interviewed representatives from student, parent, and school organizations to learn about the League's relationship with its constituents. Finally, we examined how other states have organized similar activities.

1 *Minn. Stat.* §128C.01.

BACKGROUND

We looked at the League's overall structure and noted that:

- **The Minnesota State High School League is a large "grassroots" organization.**

The League is made up of 495 public and private high schools each of which appoints two designated school representatives and four designated activity representatives. One of the two designated school representatives must be a school board member and the other must be a faculty member or administrator. Activity representatives are chosen from each of the following areas: boys sports, girls sports, music, and speech. The designated representatives vote on behalf of their member schools when the schools are called upon to vote, and are eligible for election into region committees and the Representative Assembly, which is the League's "legislative" body. The League also has a 20-member board of directors that consists of 8 school representatives, 4 activity representatives, 2 representatives from both the Association of Secondary School Principals and the Minnesota State School Boards Association, and 4 gubernatorial appointments.

Over the last ten years, the League has been subject to public scrutiny. In October 1987, the Legislative Audit Commission directed our office to examine League governance and accountability. At that time, we found inappropriate policies and practices, weak internal mechanisms for accountability, inadequate safeguards to ensure prudent expenditures, and insufficient outside oversight.[2] In 1991, we briefly reviewed the League's actions on key issues identified in 1987 and reported that, while the League had made some progress, many of the problems remained.[3]

Since 1987, we found that:

- **The Legislature has implemented significant reforms to increase the League's public accountability and curb financial irregularities.**

For example, state laws have expanded the League's board of directors to include four public members who are appointed by the Governor, required the State Auditor to annually perform financial and compliance audits of the League, elaborated on the reporting requirements of the Commissioner of Education (now the Commissioner of Children, Families & Learning), made expense reimbursement provisions for board members and staff comparable to state board and state agency requirements, required the League to prepare its budget according to the Department of Finance's rules, and required the League to hold public hearings on proposed eligibility rules if 100 parents request one.

2 Office of the Legislative Auditor, *Minnesota State High School League* (St. Paul, 1987).

3 Office of the Legislative Auditor, *Minnesota State High School League Update* (St. Paul, 1991).

At the same time, we found that:

- **The League has responded to public criticism by trying to increase student and parent involvement in League activities.**

For example, the League created an 18-member student advisory committee in 1991 that meets twice a year to discuss issues of interest to students; two students from this committee help the board of directors screen proposals for bylaw changes. In 1997 the board adopted various policies to improve public notification of League activities and to solicit public input. First, each year on August 15, the League publishes notices in local newspapers that explain how the public can obtain information about the League and be put on its mailing list. Second, the League sends proposed bylaw changes that were presented at Representative Assembly meetings to each school, asking that the proposed changes be discussed at a local school board meeting. Finally, during the fall and spring of each school year, the League holds area meetings throughout the state to share information about itself and to gather input from school staff, interested citizens, and others. The League also conducts open forums to discuss League issues in conjunction with the state wrestling and volleyball tournaments.

PUBLIC ACCOUNTABILITY

We examined Minnesota statutes to determine whether the League is subject to laws that are designed to ensure state agency accountability to the Legislature and the public. We found that state law sometimes requires the League to conform with requirements of state boards or agencies, but in other instances the League may establish policies of its own. The League is subject to the following laws that govern state agencies: appointing and compensating governing board members, reimbursing board members' and staff expenses, holding open meetings, and complying with the Data Practices Act. In addition, the League is subject to hiring, ethical practices, auditing, budgeting and accounting, and rulemaking laws that are different from those that govern state agencies. Finally, it is not subject to state procurement or contracting laws or statutory limits on tort claims.

Overall, we found that:

- **The League's bylaws, policies, and practices are generally consistent with state laws that govern its activities.**

The League generally complies with applicable state laws.

We found only one area where the League is not complying with statutory requirements. *Minn. Stat.* §128C.01 says that the terms, compensation, removal of members, and the filling of membership vacancies on the League's board of directors are governed by *Minn. Stat.* §15.0575. Although it appears to us that this provision refers to all board members, the League maintains that it only applies to the four members appointed by the Governor.[4] Consequently, 16 board members

4 The State Auditor's Office recently requested an Attorney General's opinion on whether *Minn. Stat.* §15.0575 refers to all 20 members of the League's board of directors. Letter from Judith H. Dutcher, to State Auditor, to Hubert H. Humphrey III, Attorney General, February 13, 1998.

start their terms in August, according to the League's bylaws, and the 4 gubernatorial appointees start their terms in January, according to state law. This causes a problem for members who are newly appointed by the Governor because they miss the orientation sessions with other new board members and board meetings in the fall of the year prior to their appointment. Because the League operates in conformity with the school year, not the calendar year, we recommend that:

- **The Legislature should consider requiring that all of the League's board members begin their terms on August 1.**

Over the last ten years, the Legislature has passed laws to address the League's financial problems of the late 1980s. Consequently, Minnesota statutes are rather prescriptive in delineating what the State Auditor must examine when auditing the Minnesota State High School League. We reviewed the State Auditor's audits of the League from 1988 through 1997 and learned that:

- **Since the early 1990s, the State Auditor has found no major problems with the League's financial practices.**

Staff from the State Auditor's Office told us that League audits were done in compliance with the law and with the full cooperation of the League. Because the League has apparently addressed its previous financial problems, it may appropriate for the Legislature to give the State Auditor's Office the freedom to choose how best to audit the League. We think that:

- **The Legislature should consider giving the State Auditor's Office the same flexibility in determining how to audit the League as the Auditor now has with local government entities.**

The League is exempt from the rulemaking and contested case requirements of the Administrative Procedure Act. Both the League's Representative Assembly and its board of directors adopt rules that regulate student participation in extracurricular activities--the assembly through its bylaws and the board through its policies that clarify and interpret bylaws. We examined both rulemaking processes and found that:

- **Although the League adopts rules differently than state agencies, its rulemaking procedures generally promote public accountability.**

The League has tried to increase public involvement in rulemaking.

The League has made efforts in recent years to increase public input into its rulemaking procedures. Yet, we noted that:

- **Despite the League's efforts, overall involvement by the public in rulemaking has been minimal.**

Although the League must hold a public hearing on its eligibility rules if 100 or more parents or guardians of students request one, as of February 1998, the board had not received any requests. Also, attendance at area meetings and at the open forums held during the state wrestling and volleyball tournaments has been sparse. Several area meetings had no public attendees, and none had more than six.

Although the League's rulemaking processes have been open and democratic, we found that:

- **The various documents that outline the League's rules are often unclear and contradict one another about whether a rule is a bylaw or a policy.**

League documents sometimes contradict one another.

We found ambiguities in how some responsibilities are divided between the board and the Representative Assembly and numerous inconsistencies in the League's handbooks. Some discrepancies involved labeling certain provisions as bylaws one year and as policies the next, or *vice versa*. In other cases, we found instances where provisions that are defined as bylaws in one 1997-98 publication are described as policies in another 1997-98 publication or *vice versa*, or are absent from another publication altogether. We also found inconsistencies in how provisions of the League's constitution are numbered in its 1997-98 *Official League Handbook* and its Internet web site.

While these contradictions may have little or no practical consequences for students, as they must adhere to all bylaws and policies regardless of their origin, these discrepancies can create confusion if someone wishes to change a bylaw or policy. Furthermore, such contradictions may create the perception that the League's rulemaking process is arbitrary. Therefore, we recommend that:

- **The board should carefully review its publications and Internet web site for consistency with the League's official bylaws and policies.**

Finally, the League is not required to adhere to state laws regarding procurement or contracting for professional/technical services, and we found that the League's policies in these areas provide few safeguards to help ensure public accountability.[5] Although the League's staff have periodically obtained price quotes from different vendors for low-cost printing jobs (typically $10,000 or less), some larger purchases, as well as professional/technical contracts, have been entered into without competitive bids or proposals. We recommend that:

- **The League should adopt policies to obtain competitive bids or proposals for purchases or contracts above a certain dollar threshold and to periodically review preferred vendor contracts.**

We noted that the League has solicited proposals from five vendors to expand its Internet web site and appears to be moving in a deliberate, well-studied manner. The League should consider using this experience to develop overall procurement and contracting policies that delineate the various factors, including price, that should be considered before making major procurement or contracting decisions.

5 The State Auditor's Office recently requested an Attorney General's opinion on whether the League is subject to the uniform municipal contracting Law as set forth in *Minn. Stat.* §471.345. Letter from Judith H. Dutcher, State Auditor, to Hubert H. Humphrey III, Attorney General, February 13, 1998.

ALTERNATIVE STRUCTURES

We contacted 24 educational organizations that represent schools, board members, staff, students, and parents to ascertain how satisfied they are with League activities and their opportunities for involvement. We found that:

- **For the most part, League constituents are pleased with the League and its activities.**

Almost all of the organizations that had an opinion about the League said that it was doing a good job organizing events and meeting the needs of schools and students and that they had adequate input into rulemaking. Also, in 1995 the League surveyed a sample of students who participated in extracurricular activities and found little dissatisfaction with League-related issues. The League obtained similar results from the focus groups that it held throughout the state in 1998. Finally, we noted that few students or parents challenge the League's bylaws as they relate to student eligibility. Even though about 160,000 students take part in League-regulated activities each year, only 13 contested case hearings regarding student eligibility were held at the school level, and only 6 of these cases were appealed to the League's board of directors during the first 7 months of the 1997-98 school year.

Because there does not appear to be widespread dissatisfaction with the League and because we found no major problems with the League's accountability to the public:

- **We do not think that it is necessary for the Legislature to make major changes in the League's organizational structure at this time.**

The League is already subject to several public accountability laws, and we found only one area of noncompliance. Even though the League's rulemaking process is autonomous, we found that there are ample opportunities for public input.

Public oversight is needed because the League's major activities are governmental in nature.

Nevertheless, because the League's major activities are essentially governmental--regulating student participation in certain extracurricular activities--we think that public oversight, especially in program areas, is warranted. Two state agencies already have some direct oversight responsibilities--the Department of Children, Families & Learning and the State Auditor's Office. We noted that the State Auditor's Office has consistently fulfilled its statutory role in overseeing financial matters. However, we found that:

- **There is no record that the Department of Children, Families & Learning has reviewed League activities as required by law.**

Minnesota statutes require that the Commissioner obtain and review each year certain information about the League. There is no record that the department has reviewed these data for the last several years. Staff from the Department of Children, Families & Learning told us that the department has just recently begun to develop an oversight activity related to the League within the department's

monitoring and compliance unit and is currently reviewing the required information about the League.

We think that it would be useful to the League, the Legislature, and the general public if the Department of Children, Families & Learning would exercise its existing oversight responsibilities regarding the League. In addition, we recommend that:

- **The Legislature should expand the Department of Children, Families & Learning's oversight responsibilities to include an annual, written review of League activities and a nonbinding review of all proposed bylaw and policy changes.**

The Department of Children, Families & Learning's oversight role should be expanded.

Copies of the department's reviews should be made available to the Representative Assembly and the board of directors before they change the League's bylaws and policies. This is not a new or unique idea. We found that at least four other states (Iowa, Florida, Texas, and Washington) have their education departments exercising direct oversight over their athletic associations and their rules.

Also, we recommend that:

- **The Legislature should consider giving the Department of Children, Families & Learning the explicit statutory authority to examine League-related issues when warranted.**

Currently, statutes limit the department's role to reviewing certain information that it is required to obtain from the League. Although state law permits the department to recommend whether League activities warrant legislation, the department does not have the express authority to initiate its own examinations into League activities. The department should be able to examine various issues and trends regarding extracurricular activities and their effect on students' overall education.

Finally, we recommend that:

- **The League should better define the roles and responsibilities of its ombudspersons and publicize their availability.**

Since 1997, the League has retained the services of three individuals to act as ombudspersons for people who have concerns about bylaws, policies, or other issues and who feel that their concerns have not received proper attention from the League's staff. However, the ombudsperson's role is limited to advocacy of a person's concerns to the League's executive director and board president. The League does not give specific authority to its ombudsperson to investigate an issue such as a student's eligibility or to advocate on behalf of parents and students before the Representative Assembly.

To be effective, we think that the ombudsperson should function as independently of the League as possible. To this end, the League should have its Representative Assembly either elect or appoint individuals to this office for a specified period of time (for example, four years).[6] Not only would this give the ombudspersons more independence to investigate League issues, especially those that concern decisions made by League staff or its board of directors, but it would also enhance their level of visibility and importance within the League.

The League should publicize the availability of its ombudspersons.

Regardless of how the ombudspersons are selected, the League needs to improve how it publicizes their availability. Unlike state agency ombudspersons, the names, addresses, and telephone numbers of the League's ombudspersons are not available on the its Internet web site or in its publications. A person wishing to contact one must call the League's office to get the information. To date, the League has not had anyone inquire about or use its ombudspersons.

6 This would require changing the League's constitution.

INTRODUCTION

In the past, there were concerns about financial issues at the League.

The Minnesota State High School League is a "nonprofit corporation that is a voluntary association" of public and private high schools.[1] Member schools delegate control of certain extracurricular activities to the League, making the League, according to its constitution, responsible for: administering a program of competitive activities in athletics, music, speech, and drama on district, regional, and state levels; establishing uniform and equitable rules for participation; elevating standards of sportsmanship and encouraging responsible citizenship; protecting schools and students from exploitation by special interest groups; providing plans for financial assistance to students injured in school activities; and serving the best interests of member schools and their students by providing cooperative and coordinated activities on a statewide basis that individual schools could not organize on their own.

Although the League is not a state agency, over the last ten years, the Legislature has shown continuing interest in its activities. In the late 1980s and early 1990s, concern was most strongly focused on financial issues at the League. Two studies by the Legislative Auditor's Office, annual financial and compliance audits by the State Auditor's Office, and a local newspaper investigation all documented questionable financial policies, procedures, and practices. The Legislature responded by enacting legislation that required the League to implement significant reforms to increase public accountability and curb financial irregularities.

Yet, questions about the League's activities have persisted. In May 1997, the Legislative Audit Commission again directed us to evaluate the Minnesota State High School League. Our study focused on the following major research questions:

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- **What state laws govern the League's operation and how do they compare with those governing state agencies?**
- **Are changes needed to make the League more accountable to the Legislature, students, parents, member schools, and the public?**

1 *Minn. Stat.* §128C.01.

To answer these questions, we compared the Minnesota State High School League's bylaws and policies with various public accountability laws that govern state agencies. We also examined League practices, especially in areas where the League is not subject to state law or where issues were raised by legislators or staff. We talked with staff and board members from the League and officials from state agencies with oversight responsibilities. We also interviewed representatives from student, parent, and school organizations to learn about the League's relationship with its constituents. Finally, we examined how other states have organized similar activities.

Because Minnesota statutes clearly assign the responsibility for conducting financial and compliance audits to the State Auditor's Office, we did not audit financial expenditures. Instead, we focused on the overall structure of the League and the framework in which expenditures are made. We also excluded the League's 16 regional offices from our review. The League's constitution permits region committees to collect and expend funds in administering sub-state tournaments and competitions.

This report has three chapters. Chapter 1 provides background information on the Minnesota State High School League and discusses how it has changed since 1987. Chapter 2 examines how state laws try to ensure public accountability in state agencies, the extent to which these state laws also govern the League, and how accountability is ensured when state laws do not apply. Chapter 3 discusses whether major changes are needed in the League's structure and presents our major recommendations for the Legislature's consideration.

Background

CHAPTER 1

The Minnesota State High School League was formed in 1916 as a nonprofit voluntary association of Minnesota high schools. Then called the State High School Athletic Association, its mission was to promote amateur sports for boys and establish uniform rules for participation in interscholastic contests. The League adopted its current name in 1929 and was incorporated in 1960 as a nonprofit corporation under *Minn. Stat.* §317A. The League permanently added girls sports to its activity roster in 1969.

Over the years, the League has expanded its sponsorship of extracurricular activities to include non-athletic activities. In 1929, speech and debate contests were added to the activities promoted by the League. The League also sponsors events in music and drama. Figure 1.1 lists the activities that the League sponsored during the 1997-98 school year.

In this chapter, we ask:

- **How is the Minnesota State High School League organized?**
- **What changes have occurred since 1987, and has the League responded to issues raised in our 1987 evaluation?**
- **How have the League's revenues and expenditures varied since 1987?**

To answer these questions, we examined the League constitution and its policy manuals and handbooks. We also reviewed previous studies of the League's activities as well as subsequent changes in legislation.

ORGANIZATION

Both public and private high schools may join the Minnesota State High School League, provided that compulsory attendance requirements are satisfied and the schools' governing boards certify in writing that they wish to delegate authority for the control, supervision, and regulation of interscholastic activities to the League.[1] High schools pay annual membership fees of $100, plus $35 for each activity in which they choose to participate. Currently, the League is made up of

1 *Minn. Stat.* §128C.01, subds. 1-2. The certificates are filed with the Commissioner of Children, Families & Learning.

Figure 1.1: Activities Sponsored by the Minnesota State High School League, 1997-98

Boys Athletics
- Baseball
- Football
- Wrestling

Girls Athletics
- Badminton
- Gymnastics
- Softball
- Synchronized swimming
- Volleyball

Non-Athletic Activities
- Dance team
- Debate
- Drama
- Music
- Speech

Boys and Girls Athletics
- Adapted floor hockey
- Adapted soccer
- Adapted softball
- Basketball
- Cheerleading (non-competitive)
- Cross country
- Golf
- Hockey
- Skiing (Alpine and Nordic)
- Soccer
- Swimming and diving
- Tennis
- Track and field

SOURCES: Minnesota State High School League, *1997-98 Athletics Rules and Policies Manual* (Brooklyn Center, MN, 1997) and Minnesota State High School League, *1997-98 Official Handbook* (Brooklyn Center, MN, 1997), 4, 57.

495 member high schools, of which about three-fourths are public schools and one-fourth are private schools, including home schools.[2]

During 1997-98, the League was made up of 495 high schools.

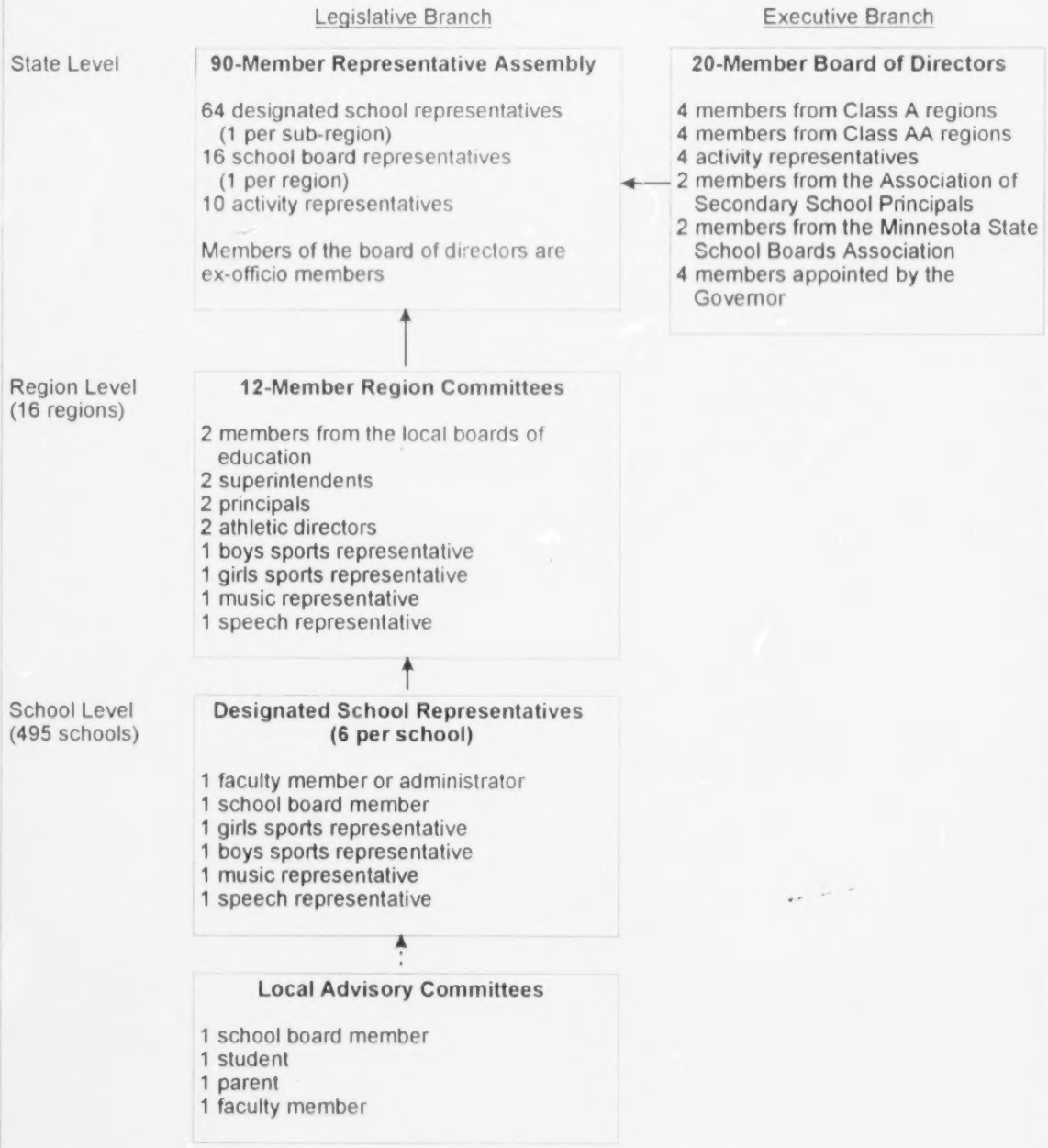
According to the League constitution, the governing body of each member school names six people to represent the school--two designated school representatives and four designated activity representatives. One of the two designated school representatives must be a school board member and the other must be a faculty member or administrator. Activity representatives are chosen for their involvement in one of four areas: boys sports, girls sports, music, and speech. The designated school representatives vote on behalf of their school when necessary and are eligible for election to region committees and the Representative Assembly (which we discuss below). The League also encourages each school to form a local advisory committee which includes, at a minimum, a school board member, a faculty member, a parent, and a student. The committee's role is to advise its designated school representatives on League matters.

Figure 1.2 illustrates the relationship among schools, region committees, and the League's statewide governing bodies (the Representative Assembly and board of directors). As shown:

- **The Minnesota State High School League is a large "grassroots" organization.**

2 Home schools with fewer than five students may join the League without paying membership or activity fees although they do not have voting privileges. Home schools may also enter into cooperative arrangements with other schools to participate in League activities.

Figure 1.2: Minnesota State High School League Governance


Legislative Branch
Executive Branch
State Level
90-Member Representative Assembly
64 designated school representatives (1 per sub-region)
16 school board representatives (1 per region)
10 activity representatives
Members of the board of directors are ex-officio members
20-Member Board of Directors
4 members from Class A regions
4 members from Class AA regions
4 activity representatives
2 members from the Association of Secondary School Principals
2 members from the Minnesota State School Boards Association
4 members appointed by the Governor
Region Level (16 regions)
12-Member Region Committees
2 members from the local boards of education
2 superintendents
2 principals
2 athletic directors
1 boys sports representative
1 girls sports representative
1 music representative
1 speech representative
School Level (495 schools)
Designated School Representatives (6 per school)
1 faculty member or administrator
1 school board member
1 girls sports representative
1 boys sports representative
1 music representative
1 speech representative
Local Advisory Committees
1 school board member
1 student
1 parent
1 faculty member

High schools are divided into two "classes" based on student enrollment. Schools with fewer than 500 enrolled students ("Class A" schools) are in the majority (76 percent) and are located primarily outside the Twin Cities. "Class AA" schools, with enrollment of 500 or more students, are found in urban areas throughout the state. In each of the two classes, the League has established 8 regions and 32 sub-regions (four in each region) to organize and administer sub-state competitions. Each of the 16 regions is represented by a "region committee" that must have at least 12 members: 2 members from local boards of education, 2 superintendents, 2 principals, 2 athletic directors, 1 girls sports coach, 1 boys sports coach, 1 music director, and 1 drama/speech/debate director. Each region committee selects a school board member to serve in the Representative Assembly.

The Representative Assembly is the League's "legislative" body.

The Representative Assembly is the League's "legislative" body. In addition to the 16 representatives from the region committees, Class A and Class AA schools are represented in the assembly by a representative from each of the 64 sub-regions. The other 10 members of the 90-member Representative Assembly represent the following organizations: the Minnesota State High School Athletic Directors Association, the Minnesota Music Educators Association, the Minnesota State High School Coaches Association, the Speech Activities Association, and the Minnesota State High School Association for Coaches of Girls Sports. Each of these organizations selects two representatives, one from Class A schools and the other from Class AA schools. Members of the Representative Assembly serve two-year terms and meet twice a year to consider proposed amendments to League bylaws.

Under the League constitution, members of its board of directors serve as additional, ex officio, non-voting members of the Representative Assembly (although the board president can vote to break a tie). The board of directors has 20 members: 14 are selected according to League bylaws, 4 are appointed by the Governor, and 2 are appointed by the Association of Secondary School Principals. The 14 members selected by the League include 8 school representatives, each representing 2 regions and elected by member high schools in their regions, and 4 activity representatives (1 for each activity area) elected by the schools' designated activity representatives. The Minnesota State School Boards Association appoints the remaining two board members.

The board establishes committees that focus on particular issues. For 1997-98, its standing committees are: finance, education, eligibility, activity advisory review, policy, communication, and executive. In addition, the board names *ad hoc* committees, such as the spring sports *ad hoc* committee. The board of directors selects and compensates an executive director who reports to the board and four associate directors who report to the executive director. The executive director hires the rest of the League's staff.

RECENT HISTORY

Although the League was formed as a voluntary association of schools in 1916, the Legislature did not pass any laws affecting it for more than 40 years. In 1957 the Legislature passed a law authorizing school boards to join an association whose objectives are the promotion and regulation of athletic, oratorical, musical, dramatic, or other contests by or between school children.[3] This law also required that the Commissioner of Education or a designee be included as an ex-officio member of the association's board. The Commissioner was required to report to the Legislature on the association's activities and to recommend legislation. A 1973 law recognized the League by name as a nonprofit corporation that schools could join for extracurricular activities.[4]

Over the last ten years, the League has been subject to more public scrutiny. In October 1987, the Legislative Audit Commission directed our office to examine League governance and accountability in light of concerns raised in a newspaper article that questioned the propriety of League expenditures.[5] At that time, we found inappropriate policies and practices, weak internal mechanisms for accountability, inadequate safeguards to ensure prudent expenditures, and insufficient outside oversight.[6] We also discussed the ambiguous nature of the League's organizational status and encouraged the Legislature to consider various reforms. In 1991 we briefly reviewed the League's actions on key issues identified in 1987 and reported that, while the League had made some progress, many of the problems remained: financial controls needed improvement, executive salaries were high, and oversight continued to be weak.[7] The State Auditor's Office also documented severe financial problems in the late 1980s, most notably in the areas of expense reimbursement and payments to the former executive director.[8]

In reviewing the actions of the Legislature, we found that:

- **Since 1987, the Legislature has implemented significant reforms to increase the League's public accountability and curb financial irregularities.**

As shown in Figure 1.3, the Legislature has attempted to increase oversight of the League by increasing the League's board membership to include four gubernatorial appointees, requiring the State Auditor to annually perform financial and compliance audits of the League, elaborating on the reporting requirements of

3 *Minn. Laws* (1957), ch. 726.

4 *Minn. Laws* (1973), ch. 738.

5 "High School Spending Questioned," *Star Tribune* (Minneapolis), October 11, 1987, sec. A, p. 1, 14.

6 Office of the Legislative Auditor, *Minnesota State High School League* (St. Paul, 1987).

7 Office of the Legislative Auditor, *Minnesota State High School League Update* (St. Paul, 1991).

8 Office of the State Auditor, *Report of the State Auditor on the Financial Affairs of the Minnesota State High School League* (St. Paul, 1988).

Figure 1.3: Major Legislation Affecting the Minnesota State High School League, 1988-97

1988 Legislation

Removed the Commissioner of Education's voting privileges as a member of the League's board of directors.

Expanded League board membership to include four public members appointed by the Governor, at least one of whom must be American Indian, Asian, Black, or Hispanic.

Required that the terms, compensation, removal of members, and filling of board vacancies follow *Minn. Stat.* §15.0575, and that the level of expense reimbursement for League employees be the same as that adopted in the commissioner's plan for state employees.

Prohibited the League from having credit cards, but allowed the executive director to have an expense account.

Directed the State Auditor to do an annual financial and compliance audit of the League.

Subjected the League to the Data Practices Act.

Directed the Commissioner of Employee Relations to report on appropriate salaries of League employees as if the employees were members of the state classified service.

1990 Legislation

Made the League subject to the Ethics in Government Act.

Directed the Commissioner of Education to report on five specific areas of League activities each year.

1991 Legislation

Required the State Auditor to review private audits done for the League's administrative regions.

Prohibited the League from entering into corporate sponsorships/relationships with groups doing business with participants in League activities. Allowed the League to sell advertising under certain circumstances.

Removed the requirement that the Commissioner of Education's review of certain League information be a written review.

1992 Legislation

Removed the Commissioner of Education from the board of directors. Directed the board to prepare a written report annually for the Commissioner of Education to review.

Directed the Department of Employee Relations to report on appropriate salary ranges for the League.

1993 Legislation

Limited bonuses that may be paid to employees of certain groups, including the League, to 10 percent or less of employees' base salary.

1995 Legislation

Amended the League's compliance with the Data Practices Act to require the League to make its eligibility determinations available to the public as summary data, with personal identifiers removed.

1997 Legislation

Subjected the League to Department of Finance rules regarding budgeting that apply to all state agencies.

Required that the State Auditor and the board of directors agree upon the scope of the auditor's audits. Directed the State Auditor to audit the League's administrative regions.

Renewed the League's exemption from the Administrative Procedure Act. Required the League to adopt procedures to ensure public notice of all proposed eligibility rules and hold hearings if requested by more than 100 parents or guardians.

the Commissioner of Education (now the Commissioner of Children, Families & Learning) while at the same time removing the commissioner's voting privileges as a board member, making expense reimbursement provisions for board members and staff comparable to state board and state agency requirements, and addressing issues related to credit card and automobile use.[9] A 1997 law required that the State Auditor do annual financial audits of the League's administrative regions and required that the League prepare its budget according to the Department of Finance's rules for state agencies.[10] Also, the Legislature passed a law to increase the objectivity of the League's rulemaking process.[11]

The Legislature has enacted numerous reforms affecting the League.

At the same time, the Legislature passed some laws that could weaken public accountability. State law adopted in 1991 eliminated the Commissioner of Education's responsibility for reporting to the Legislature about the League.[12] Laws passed in 1997 require that the State Auditor and the League's board of directors agree upon the scope of its annual audit and renew the League's exemption from the Administrative Procedure Act.[13]

Finally, we found that:

- **The League has responded to public criticism by trying to increase student and parent involvement in League activities.**

For example, the League created an 18-member student advisory committee in 1991 that is comprised of students from across the state. It meets twice a year to discuss issues of interest to students, and two of its members sit on the board of directors' activity advisory committee which screens proposals for bylaw changes.

In 1997 the board adopted policies designed to improve public notification about its bylaws and policies and to solicit public input. First, each year on August 15, the League publishes a notice in a newspaper with statewide circulation that citizens wishing to receive League information may contact its office and be placed on a mailing list. Mailings include proposed changes to bylaws and the names of the Representative Assembly delegates so interested parties can inform delegates of their opinions. The League has also begun to post proposed changes to eligibility bylaws on its Internet web site.

Second, the League sends proposed bylaw changes that were presented at Representative Assembly meetings to each school's designated school board representative. These representatives are asked to include a discussion of League issues on the local school board's agenda.

9 *Minn. Laws* (1988), ch. 718, art. 7, sec. 45-46 and *Minn. Laws* (1990), ch. 562, art. 7, sec. 9.

10 *Minn. Laws* (1Sp1997), ch. 4, art. 7, sec. 37-38.

11 *Minn. Laws* (1997), ch. 187, art. 4, sec. 6.

12 *Minn. Laws* (1991), ch. 265, art. 11, sec. 14.

13 *Minn. Laws* (1Sp1997), ch. 4, art. 7, sec. 38 and *Minn. Laws* (1997), ch. 187, art. 4, sec. 5.

Finally, during the fall and spring of each school year, the League holds area meetings throughout the state to share information about itself and to gather input from school staff, interested citizens, and others.[14] The League publicizes these meetings in its publications, including its Internet web site, and through the local media. Also, the League holds an open forum to discuss bylaws, policies, and other related League issues in conjunction with the state wrestling and volleyball tournaments.

REVENUES AND EXPENDITURES

Using reports from the State Auditor's Office, we examined trends in League revenues and expenditures from fiscal year 1988 through 1997.[15] Table 1.1 shows that:

- **Over the last ten years, after adjusting for inflation, League revenues increased about 1 percent while expenditures increased about 10 percent.**

Table 1.1: Minnesota State High School League Revenue and Expenditures, FY1988-97

	FY88	FY90	FY92	FY94	FY96	FY97	Change FY1988-97	Change (Adjusted for Inflation)[a]
Revenue	$3,375	$3,726	$3,402	$3,984	$4,294	$4,478	33%	1%
Expenditures (total)	3,198	3,532	3,712	3,447	3,866	4,603	44	10
Board	62	71	45	43	48	72	16	-12
Salaries	508	599	681	730	799	817	61	23
Benefits	172	153	311	216	232	234	36	4

[a]Adjusted for inflation using the national price deflator for state and local government consumption expenditures and gross investment.

SOURCES: Minnesota State Auditor's Office, annual financial audits of the Minnesota State High School League.

Tournaments are the League's main source of revenue and its biggest expense.

As shown, board expenses dropped 12 percent in constant dollars, even though they nearly doubled from 1996 to 1997. Until fiscal year 1997, board expenses decreased rather consistently, despite adding additional members to the board. Part of the drop may be due to improved per diem and expense reimbursement procedures, as we discuss in Chapter 2. According to board staff, recent increases can be partially attributed to increased travel costs for outstate board members and more frequent committee meetings.

From fiscal years 1988 through 1997, total expenditures for staff salaries and benefits increased 23 and 4 percent respectively, although the number of staff employed did not change substantially. Chapter 2 discusses staff salaries in greater detail.

14 Spring 1997 meetings were held in Thief River Falls, Fergus Falls, Eveleth, St. Cloud, St. Paul, Marshall, Mankato, and Rochester. Spring 1998 meetings were held in the same cities, except Brooklyn Center was substituted for St. Paul.

15 These data do not include revenues and expenditures from the League's 16 administrative regions, which have only recently come under the jurisdiction of the State Auditor.

We found that:

- **During fiscal year 1997, the Minnesota State High School League took in nearly $4.5 million in revenue and spent about $4.6 million.**

Tournaments represented the League's largest source of revenue, accounting for 74 percent ($3.3 million) of revenue. The next largest revenue sources were membership and activity fees (8 percent) and corporate sponsorships (7 percent).

Tournaments also accounted for the largest share of League expenditures during fiscal year 1997--49 percent of total expenditures or about $2.2 million. Staff salaries (18 percent) and benefits (5 percent) were the next largest categories of expenditures.

While the League constitution requires that surplus revenues that exceed 50 percent of average expenditures over the prior three years be refunded to member schools, it has never returned money under this provision. Although surplus revenues have been close to $500,000 in some years, they would have to be about three times that amount to activate the League's pay-back provision. Nevertheless, the League reimburses schools for a portion of their costs to participate in state tournaments. During 1997, the League reimbursed about $800,000 to participating schools.

SUMMARY

The Minnesota State High School League is a nonprofit voluntary association of schools that regulates the extracurricular activities of member high schools. The League is a large grassroots organization with all parts of the state represented in its governing structure. Individual schools elect school representatives and region committees facilitate the planning of regional events. The Representative Assembly has members from across the entire state, and the board of directors reflects the diversity of the League's member schools and the activities that the League oversees.

Over the last ten years, the Minnesota State High School League has been subject to public scrutiny. In the late 1980s and early 1990s, concern was most strongly focused on financial issues at the League. The Legislature responded by requiring the League to implement significant reforms to increase public accountability and curb financial irregularities. The League also responded to other concerns regarding public accessibility. For example, the League has provided opportunities for students and parents to participate indirectly in the rulemaking process and has developed methods to try to increase public access to League information.

Public Accountability

CHAPTER 2

Over the last several years, there has been considerable controversy surrounding the Minnesota State High School League's status. As noted in Chapter 1, Minnesota law defines the League as "a nonprofit corporation that is a voluntary association of high schools."[1] However, because most of its member schools are publicly funded and because the League has a virtual monopoly over high school athletics and fine arts competition, some people think the League should operate more like a public entity or at least be subject to close government oversight. The Legislature has responded to this concern by requiring the League to follow some, but not all, of the laws that apply to state agencies. In this chapter, we ask:

- **What state laws govern the League's operation, and how do they compare with laws governing state agencies?**
- **How does the League ensure compliance with applicable state laws?**
- **Do League policies and procedures ensure public accountability in areas where laws governing state agencies do not apply?**

To answer these questions, we compared laws for state agencies with laws affecting the League. We considered how laws apply to both the League's board of directors and its staff. We reviewed laws about governing boards, compensation and expense reimbursement for board members and staff, hiring of staff, ethical practices, open meetings, data practices, rulemaking and contested cases, procurement and contracting, budgeting and accounting, auditing, and tort claims. We also tried to assess how the League has carried out its responsibilities in each of these areas. We examined League policy manuals and handbooks, reviewed minutes of League meetings, and talked with members of the League's board and staff. We also attended meetings of the League's board of directors and the Representative Assembly. Because the State Auditor is responsible for annual financial audits of the League, we also met with the State Auditor's staff to discuss the results of their audits.

Overall, we found that state law sometimes requires the League to conform with requirements of state boards or agencies, but in other instances the League may establish its own policies as a nonprofit corporation. With some minor exceptions, we observed that the League was following applicable state laws, and that the League had policies in place to ensure a satisfactory degree of public

1 *Minn. Stat.* §128C.01, subd. 1.

accountability. However, ambiguity about the League's status has contributed to controversy and misunderstanding about the League.

STATUS OF THE HIGH SCHOOL LEAGUE

The Minnesota State High School League is not a state agency. However, some people argue that the League should be considered a governmental or public entity, citing that:

Although the League is not a state agency, it regulates student behavior statewide.

- Public schools account for most of the League's membership,
- Most of the people who are in governance positions are either employed by public schools or are elected school board members,
- Schools delegate their authority to operate extracurricular activities to the League,
- The League's activities are governmental in nature, authoritatively regulating certain student activities, and
- Students wishing to participate in interscholastic athletics and fine arts competitions must, for all practical purposes, abide by League rules.

The League maintains that it is not a governmental or public entity because it was not created by the Legislature or local government, but rather by a group of incorporators who later permitted high schools to join their association.[2] The League points out that schools' participation is voluntary and that schools are free to choose in which activities they participate. In addition, the League argues that most of its funds, derived from the sales of tournament tickets and broadcast rights, are not general tax revenues.

The question of whether the League is a governmental or public entity is immaterial in many respects, since legal requirements often vary among these entities. For example, state agencies are subject to more state oversight than local governmental entities. Recognizing that, we examined Minnesota statutes to determine whether the League is subject to laws that are designed to ensure state agency accountability to the Legislature and the public. We found that the League is subject to the following laws that govern state agencies: appointing and compensating governing board members, reimbursing board members' and staff expenses, holding open meetings, and complying with the Data Practices Act. In addition, the League is subject to hiring, ethical practices, auditing, budgeting and accounting, and rulemaking laws that are different from those that govern state agencies. Finally, it is not subject to state procurement or contracting laws or statutory limits on tort claims.

2 Letter from Roger Aronson to State Auditor, Judith Dutcher, December 16, 1996.

LEAGUE ACTIVITIES SUBJECT TO LAWS FOR STATE AGENCIES

Figure 2.1 shows areas where the League is subject to the same laws as state agencies. We discuss what state laws require, how they apply to the League, and how the League has carried out the mandates.

Governance

Laws that Govern State Agencies

The Governor usually appoints state agency board members and commissioners. Board vacancies are published in the *State Register*, and the Secretary of State accepts nominations through an open appointment process.[3] Senate confirmation is required for some important state boards. State law also specifies procedures for compensating board members, removing members from office, and filling board vacancies.[4] According to statute, membership terms of appointed board members of state agencies are generally four years and end on the first Monday in January. Board members can be removed for cause or for missing three consecutive meetings.

Figure 2.1: Laws Governing the Minnesota State High School League and State Agencies

Governing Boards

- Board vacancies published in the *State Register* and nominations process set.
- The Governor appoints most board members, but special provisions may apply.
- Board member terms are generally four years, beginning in January.

Expense Reimbursement

- Per diem reimbursement limit of $55.
- Expense reimbursement for board members and staff must be consistent with the commissioner's plan for state employees.

Open Meetings

- Meetings are open to the public.
- Advance notices are required.
- Votes and actions must be recorded.

Data Practices

- Data are generally public, with some exceptions.
- Agencies must establish procedures for filling requests for data.

3 *Minn. Stat.* §15.0597.

4 *Minn. Stat.* §15.0575.

Laws and Policies that Govern the League

Minn. Stat. §128C.01 requires the League to have a 20-member governing board. The Governor appoints four members according to *Minn. Stat.* §15.0597. Each of the Governor's appointees must be a parent, and at least one must be American Indian, Asian, Black, or Hispanic. The Minnesota Association of Secondary School Principals appoints two board members. Statutes require that the remaining 14 members be selected according to the League's bylaws.[5] Of the 14 board members selected under League bylaws, 8 must be elected as school representatives, 4 must be elected as activity representatives, and 2 must be appointed by the Minnesota State School Boards Association.

Minnesota law also says that the terms, compensation, removal of members, and the filling of membership vacancies are governed by *Minn. Stat.* §15.0575.[6] Although it appears to us that this provision refers to all board members, the League maintains that it only applies to the four members appointed by the Governor.[7] This ambiguity affects the terms and removal of board members who were elected according to League bylaws and the filling of vacancies of those members. In any event, four board members are appointed by direct application of statute and serve under the terms and conditions specified above.

The League's board of directors consists of 16 representatives from various high school constituencies, plus 4 "public" members appointed by the Governor.

Unless League bylaws specify otherwise, directors of nonprofit corporations are subject to state laws on nonprofit corporations.[8] For example, unless the League were to adopt bylaws that specify otherwise, board meetings must be held at least once a year.[9]

The League constitution incorporates the statutory requirement that the board must include four members of the public appointed by the Governor.[10] However, according to the League's *Policy Manual and Guidelines*, board policy law governs gubernatorial appointments: "Although the Constitution does not require or provide for additional members, the schools have *allowed* the Governor to appoint four (4) members." (italics added)[11] The constitution also states that 2 board members are selected by the Minnesota Association of Secondary School Principals, and 14 members are selected according to League bylaws. Elections for board members are held between March 1 and May 1. A board member's term of office begins on August 1 following the election, except for directors appointed by the Governor.[12]

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5 *Minn. Stat.* §128C.01, subd. 4 (a).

6 *Minn. Stat.* §128C.01, subd. 4 (b).

7 After its most recent financial audit, the State Auditor requested an Attorney General's opinion on several issues, including this one. Letter from Judith H. Dutcher, State Auditor, to Hubert H. Humphrey III, Attorney General, February 13, 1998.

8 *Minn. Stat.* §317A.111, subd. 3.

9 *Minn. Stat.* §317A.231.

10 *Constitution of the Minnesota State High School League*, §211.01, as reported in Minnesota State High School League, *1997-98 Official Handbook* (Brooklyn Center, MN, 1998), 99-106. Proposed policy changes that were presented at the April board meeting would eliminate this section from the policy manual.

11 Minnesota State High School League, *Policy Manual and Guidelines* (Brooklyn Center, MN, August 1997), 9.

12 High School League, *Constitution*, §211.01.

According to the League's executive director, the two board members appointed by the school boards association usually serve four-year terms like the rest of the directors. An exception was made, however, for the current president of the League's board. Because she was elected to the board presidency near the end of her four-year term, her term was extended to five years. The next appointee from the school boards will serve a three-year term to compensate for the extension.

Our analysis of the terms of appointment of the League's board of directors leads us to recommend that:

- **The Legislature should consider requiring that all of the League's board members begin their terms on August 1.**

The terms of the directors appointed by the Governor and the terms of other board members are not consistent. This causes a problem for members who are newly appointed by the Governor because they miss the orientation sessions for new board members and other important board meetings in late summer and fall of the year just prior to their appointment. The League operates in conformity with the school year, not the calendar year.

Expense Reimbursement

Laws that Govern State Agencies

According to Minnesota law, board members of state agencies generally receive per diem payments of $55 when authorized by the board, plus expenses in the same manner and amount as authorized by the commissioner's plan adopted under *Minn. Stat.* §43A.18, subd 2.[13] Child care expenses may also be reimbursed. Members who are full-time employees of the state or a political subdivision may not receive the per diem reimbursement, but they cannot be deprived of their normal salary for that time. The League can reimburse their expenses if they are not compensated for expenses by another agency. Child care expenses can only be reimbursed to a government employee for board work outside normal working hours. Expense reimbursements for state employees are subject to labor contracts or similar employee plans.

The League is subject to state laws on expense reimbursement.

Laws and Policies that Govern the League

The four board members of the Minnesota State High School League that are appointed by the Governor are clearly limited to the reimbursement specified in statute, and it appears to us that elected board members also have the same limits under the law.[14] League employee expense reimbursements are also limited to those authorized under the commissioner's plan for state employees.[15] Unlike state agencies, the League may not have credit cards, but, like state agencies, the

13 Minn. Stat. §15.0575, subd. 3.

14 Minn. Stat. §128C.01, subd. 4 (b).

15 Minn. Stat. §128C.10, subd. 1.

League's executive director may have an expense account, subject to the same guidelines that pertain to the Commissioner of Children, Families & Learning.[16] In addition, advisory committee members can be reimbursed for expenses, and the board must have a policy on the use of automobiles and annually show its cost-effectiveness.[17]

We found that:

- **The League's per diem and expense reimbursement policies and practices for board members and staff are consistent with state law.**

The League's *Policy Manual and Guidelines* states that expense reimbursement for directors, except those precluded by law, must follow the statutory requirements cited above.[18] The League's policies prohibit the purchase of automobiles for employees, prohibit credit cards, permit an executive director expense account, and require that reimbursement rates for employees follow the commissioner's plan.[19]

According to recent audits by the State Auditor's Office, the League complies with statutory provisions, giving per diem payments only to non-governmental appointees and school board members who serve on the League's board and reimbursing expenses at the approved rates.

Open Meetings

The League must comply with the state's Open Meeting Act.

Laws that Govern State Agencies

Minnesota's Open Meeting Act requires that, with certain exceptions, all meetings of state and local government agencies, including boards, commissions, school districts, committees, and subcommittees, must be open to the public.[20] In addition, all regularly scheduled meetings must be posted in advance, and meeting notices must be sent to all news media that request notification. All votes and actions taken must be recorded in a journal that is open to the public. A person intentionally violating the Open Meeting Act is subject to a $300 civil penalty, and anyone who violates the law on three separate occasions may be removed from office.

Laws and Policies that Govern the League

The League has been subject to the Open Meeting Act since 1989.[21] According to *Minn. Stat.* §128C.22, the League is a state agency for the purposes of open meetings and is required to transact business in meetings that are open to the public.

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16 *Minn. Stat.* §128C.10, subds. 2-3.

17 *Minn. Stat.* §128C.10, subds. 4-5.

18 High School League, *Policy Manual and Guidelines*, 13.

19 High School League, *Policy Manual and Guidelines*, 24e, 57.

20 *Minn. Stat.* §471.705.

21 *Minn. Laws* (1989), ch. 220, sec. 4.

According to the League's *Policy Manual and Guidelines*, board meetings are subject to the Open Meeting Act.[22] As far as we could determine,

- **The League complies with the state's Open Meeting Act.**

We found no evidence that meetings are closed to the public. Meeting notices are posted on the bulletin board at the League's offices and on its Internet web site. Minutes of board and committee meetings are kept, although the details of committee meetings are sometimes sketchy and the minutes are not always typed.[23]

Data Practices

Laws that Govern State Agencies

All government data are classified as public data and are available for public inspection and copying, unless federal or state law or temporary classification of data specifies otherwise.[24] There are several different classifications of nonpublic data. For example, data classified as "private data on individuals" are not available to the public but are accessible to the subject of the data. State agencies must inform an individual being asked for information how it will be used, the consequences of providing or not providing it, and who will have access to it (commonly known as the "Tennessen Warning").

Agencies must establish procedures for filling all requests for data and for handling appeals by individuals questioning the accuracy of data. These appeals must be handled according to provisions of the state's Administrative Procedure Act.

Data on League activities are generally open to the public.

State agencies must document the type of data that they maintain. They must also document the rights of data subjects and procedures for accessing data on individuals. Agencies must withhold data about minors from their parents upon the minors' request and if the agency determines that withholding the data would be in the minors' best interests.

Laws and Policies that Govern the League

In 1988, the Legislature passed a law specifying that the Minnesota State High School League is subject to the Data Practices Act.[25] Although specific information on eligibility determinations is classified as private data on individuals, the League is required to make available to the public summary data

22 High School League, *Policy Manual and Guidelines*, 30.

23 The State Auditor's Office recently requested an Attorney General's opinion on whether League subcommittees have to keep minutes of their meetings under the Open Meeting Act. Letter from Judith H. Dutcher, State Auditor, to Hubert H. Humphrey III, Attorney General, February 13, 1998.

24 *Minn. Stat.* §§13.03-13.05.

25 *Minn. Laws* (1988), ch. 718, art. 7, sec. 49.

on League eligibility determinations, with identifying information removed.[26] Information and documents created during the process of carrying out League business, such as minutes from meetings, annual audits, and annual reports, are public data, as are data on League employees.[27]

The League's policy manual says that the collection, creation, receipt, maintenance, dissemination, or use of information by the League is subject to the provisions of the Data Practices Act.[28] Procedures that the board adopted in 1996 also indicate that data disputes that the League does not settle to the individual's satisfaction may go through the administrative procedure process.[29] The League's procedures also require that outside agencies with which the League contracts must maintain data as they are maintained by the League.

As far as we could determine:

- **The League complies with the Data Practices Act and has adequate procedures to maintain data privacy.**

Our review was limited to reading the League's data practices procedure manual and noting the League's compliance with the act in response to data that we requested (e.g., providing it without hesitation and blacking out individuals' names). The document explaining the Data Practices Act and its application to League business is clear and well-written.

LEAGUE ACTIVITIES SUBJECT TO OTHER STATE LAWS

In the previous section, we discussed areas where the League is required to conform to the same laws as state boards or agencies. Next we review areas where the League is not treated as a state entity, but may have other legal mandates, as shown in Figure 2.2.

Staff Hiring and Salaries

Laws that Govern State Agencies

State agency heads are appointed to the unclassified service by the Governor and are subject to Senate confirmation. For the purposes of determining salaries, agency heads are categorized into subgroups, with each subgroup having a specified salary range. In general, salaries for agency heads are capped at 95 percent of the Governor's salary. Civil service requirements govern hiring in the

26 *Minn. Stat.* §128C.17.

27 *Minn. Stat.* §13.43, subd. 2.

28 High School League, *Policy Manual and Guidelines*, 53.

29 Minnesota State High School League, *Data Practices Procedures* (Brooklyn Center, MN, December 10, 1996).

Figure 2.2: Laws Governing the Minnesota State High School League that Differ from Laws Governing State Agencies

Laws Governing State Agencies	Laws Governing the League
Hiring and Salaries	
The Governor appoints and the Senate confirms agency heads. Civil service requirements govern hiring in the classified service; collective bargaining agreements may apply. Salaries are capped at 95 percent of the Governor's salary.	The League must advertise job openings in newspapers of general circulation.
Ethical Practices	
Members of some boards and commissions, and comissioners, deputy commissioners, and assistant commissioners of state agencies must file conflict of interest statements and economic interest statements.	The League is considered a metropolitan governmental unit and a political subdivision for the purpose of the Ethics in Government Act. Whether board members and executive staff have to file statements is unclear.
Auditing	
The Legislative Auditor is responsible for auditing state agencies and determining the scope of these audits.	The State Auditor must: • conduct annual financial and compliance audits of the League that cover specific items; • reach agreement with the board regarding the scope of the audit; and • audit the League's administrative regions.
Budgeting and Accounting	
The Department of Finance oversees budget development and exerts accounting and expenditure controls on state agencies. The Legislature appropriates funds to state agencies.	The League must prepare and submit its budget to the Department of Finance and the Legislature in the same manner and form as state agencies.
Rulemaking and Contested Case Hearings	
The Administrative Procedure Act requires state agencies to: • notify the public of proposed rules and print a copy in the *State Register*; • prepare a statement of need and reasonableness; • have all proposed rules evaluated for legality and need and reasonableness by an administrative law judge; • hold hearings on proposed rules if requested by 25 individuals; and • follow specific procedures when conducting contested case hearings.	The League must: • notify the public of proposed eligibility rules and policies; • hold hearings on amendments to eligibility rules if requested by 100 parents; and • at the hearing, show the need, reasonableness, and legality of the proposed rule, which will be evaluated by an independent hearing officer.

classified service. A number of collective bargaining agreements apply to agency positions and they generally determine the salaries and benefits of state employees.

Laws and Policies that Govern the League

The League is not subject to laws that govern how state agencies hire and compensate employees. However, state law requires the League to advertise job openings in newspapers of general circulation and to emphasize recruiting protected-group members.[30] The same law requires that the League have an affirmative action policy and be considered a political subdivision with respect to comparable worth requirements. Also, statutes require that the League submit a report on its compensation plan to the Legislative Commission on Employee Relations on July 1 of every odd-numbered year.[31]

League salaries are not governed by state law.

The League constitution gives its board of directors the power to appoint an executive director for a term of three years and to determine the director's compensation.[32] The board may also appoint associate directors and determine their compensation. The board's *Policy Manual and Guidelines* further specifies that the executive director's three-year contract shall be renewed annually.[33] The *Policy Manual and Guidelines* also contains an affirmative action policy and a requirement that the League must submit annual reports on its compensation plan to the Legislative Commission on Employee Relations.[34]

Setting salaries for League staff has had a complicated history.[35] In the past ten years, several studies of the League's compensation policies have been conducted, most notably in 1989, 1991, and 1995. In response to the 1989 study by the Department of Employee Relations, the League adopted the same salary ranges for most of its employees as for state agency employees. This increased the salaries of several support staff. Later, for fiscal years 1994 and 1995, the League changed its compensation policy so that employee salaries were compared with similar positions in metropolitan school districts. For example, the director's salary was compared with that of a metropolitan area principal, and the associate directors' positions were deemed comparable to assistant principals in the metropolitan area.

In its 1995 study, the Department of Employee Relations observed that the League's compensation policies and practices were "unstable" and recommended that the League develop and monitor a compensation policy for staff.[36] The League revised its compensation policy in 1997 when it hired a consultant to set

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30 *Minn. Stat.* §128C.15.

31 *Minn. Stat.* §43A.18, subd. 4a.

32 High School League, *Constitution*, §211.02.

33 High School League, *Policy Manual and Guidelines*, 4. The board of directors is currently reviewing this policy.

34 *Ibid.*, 50, 56-57.

35 Minnesota Department of Employee Relations, *Minnesota State High School League Study of Compensation Policies* (St. Paul, 1995).

36 *Ibid.*, 5.

up a comprehensive salary plan for League employees that would conform with the state's pay equity law.[37] The new plan compares the League's executive staff with like staff in similar organizations in other "Big-10" states, and compares its middle management and administrative employees with employees in schools, counties, and the Minnesota School Boards Association, among other public entities. The League's salary committee recommended that this latest plan remain in effect for six years.

Using different comparison groups to help set salaries has resulted in some significant salary adjustments through the years. We compared 1997 League salaries with the salary ranges for state job classifications that the Department of Employee Relations judged comparable in 1989. As shown in Table 2.1:

Table 2.1: League Salaries Compared with State of Minnesota Classifications, FY1997

League Staffing	Average League Salaries[a]	Comparable State Job Classifications[b]	State Salary Ranges[c]
Executive Staff (5)	$76,674		
Executive director (1)		Executive director of PERA or TRA[d]	$50,000-67,500
Associate director (4)		Education specialist 4	51,365-72,934
Middle Management (3)	49,663		
Director of information (1)		Information and marketing coordinator[e]	36,469-51,783
Director of finance[f] (1)		Accounting officer	30,610-44,600
Office manager (1)		Office services supv. 3	29,483-43,952
Administrative Staff (9)	29,495		
Secretary - exec. dir. (1)		Executive 1	25,912-34,932
Secretary - assoc. dir. (4)		Clerk typist 4	23,323-31,404
Secretary - info. dir. (1)		Clerk typist 3	22,321-29,566
Ticket secretary (1)		Clerk 3	22,321-29,566
Mailroom secretary (1)		Clerk 3	22,321-29,566
Receptionist (1)		Clerk 2	20,796-27,290

[a]Minnesota State High School League for year ending July 31, 1997.
[b]Minnesota Department of Employee Relations, *Study of Minnesota State High School League Staff Positions* (St. Paul, January 1989). Job duties of League staff may have changed since 1989, making salary comparisons with these state job classes less valid.
[c]The salary range for the executive directors of the Teachers Retirement Association (TRA) and the Public Employees Retirement Association (PERA) is from *Minn. Stat.* §15A.081. Other salaries are from Minnesota Department of Employee Relations, *Salary Plan for July 1, 1996 - June 30, 1997* (St. Paul, 1997). The salary for the information and marketing coordinator is calculated based on the salary of the education specialist 4 position. See footnote "e" for further explanation.
[d]As of 1997, the salary range for the executive directors of TRA and PERA had not increased since 1987. In 1997, the Legislature changed the salary ceiling for the salary group in which these two positions are located to 75 percent of the Governor's salary, which comes to $85,550.
[e]The information and marketing coordinator position no longer exists. In 1989, the salary range for this position was about 71 percent of the range of the education specialist 4 position. The salary range reflected for the information and marketing coordinator is 71 percent of the education specialist 4 position.
[f]In 1989, the job title for this position was "accountant." The table reflects the salary range for an accounting officer senior.

37 John Barnett (board member), to Members of the Board, memo dated June 5, 1997, "Update on Negotiations with League Staff."

- **Except for the executive director's position, salaries for the League's management staff were slightly higher than the salary ranges established by the Department of Employee Relations for comparable state agency positions during 1997, while administrative salaries were generally within the ranges.**

For example, the Department of Employee Relations indicated that the League's associate director positions were similar to education specialist 4 positions. During 1997, the average associate director salary was $74,223 compared with a salary range of $51,365 to $72,934 for education specialist 4 positions. Salaries for the League's administrative staff were generally more than $1,000 below the maximum for comparable state positions.

The board of directors recently adopted the current compensation plan for the next six years, and this may signal the beginning of more stability in the League's compensation practices. This may change the perceptions among some individuals that the League changes salary levels without clear justification.

Ethical Practices

Laws that Govern State Agencies

The state's Ethics in Government Act is designed to ensure that public officials do not use their positions for personal gain. The law defines a public official to include anyone who is a constitutional officer or chief administrative deputy; a member, chief administrative officer, or deputy of a state board or commission with power to adopt, amend, or repeal rules or rule on contested cases; or a commissioner, deputy commissioner, or assistant commissioner of any state department.[38] Under state law, public officials may not accept gifts from lobbyists and must file conflict of interest statements with their superior and the Campaign Finance and Public Disclosure Board, should a conflict arise.[39] Public officials must also file economic interest statements.

Laws and Policies that Govern the League

The Ethics in Government Act applies to the League as a local unit of government. In statute, the League is classified as both a metropolitan governmental unit and a political subdivision.[40] It is not clear whether the League is a lobbyist principal or whether its board members and executive staff are local officials, and therefore whether laws applying to lobbyist principals and local officials apply to the League. The Ethics in Government Act requires that lobbyist principals file annual reports with the Campaign Finance and Public Disclosure Board that indicate the general range of their lobbying expenditures. Lobbyist principals are individuals or associations that spend at least $500 a year

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38 Minn. Stat. §§10A.01-10A.07.

39 The Campaign Finance and Public Disclosure Board was formerly known as the Ethical Practices Board.

40 Minn. Stat. §10A.01, subds. 26-27.

lobbying or compensating a lobbyist or spend at least $50,000 a year in other efforts to influence legislation or administrative action.[41]

The Campaign Finance and Public Disclosure Board recently issued an advisory opinion that suggests that an organization cannot be both "an individual or association," which is required by the definition of lobbyist principal, and a political subdivision.[42] The reasoning of the board's opinion suggests that, since the statute defines the League as a political subdivision, it cannot also be an individual or association and, thus, cannot be a lobbyist principal.

It is not clear how the Ethics in Government Act applies to the League.

Regardless of whether the League is required to file certain reports or is prohibited from giving or receiving gifts, the League's lobbyist, like all lobbyists, must register and file a report with the Campaign Finance and Public Disclosure Board.[43] What the report must include is, again, somewhat unclear. If the League is not "a person or association," the information that the League's lobbyist must file could be minimal.

Finally, local officials must disclose potential conflicts of interest and file statements of economic interest with their metropolitan governmental unit. A local official of a metropolitan governmental unit cannot accept a gift from a lobbyist or lobbyist principal. By definition, a local official must have some influence over the expenditure of public funds, which the League argues it does not. If League board members and staff are not local officials, they may not need to file conflict of interest and economic interest statements.

League policy requires that board members file an economic interest statement with the state each year. The League's code of ethics includes the wording: "I will . . . avoid being placed in a position of conflict of interest and refrain from using my Board position for personal or partisan gain."[44] Furthermore, League policy states that, each year, all members of the board and all employees of the League must sign the conflict of interest policy which states, "any representative of the League who has the authority to sell, purchase or lease goods and/or services shall not have a personal, financial, or professional interest in, or gain, or benefit from the sale, purchase or lease of any goods or services."[45]

We found that:

- **The League has complied with requirements of the Ethics in Government Act.**

Board members and executive staff have filed economic interest and conflict of interest statements with the League board. The League has filed a lobbyist principal report with the Campaign Finance and Public Disclosure Board and the League's lobbyist has filed the required lobbyist report with the Campaign Finance and Public Disclosure Board.

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41 *Minn. Stat.* §10A.01-10A.04, subd. 28.

42 Campaign Finance and Public Disclosure Board, Opinion # 224, January 26, 1996.

43 *Minn. Stat.* §10A.04, subd. 1.

44 High School League, *Policy Manual and Guidelines*, 24.

45 *Ibid.*, 24c, 50.

Auditing

Laws that Govern State Agencies

State agencies' financial operations, including compliance with finance-related legal requirements, are audited by the Legislative Auditor.[46] Statutes direct the Legislative Auditor to audit all state departments, boards, commissions, and other state agencies at least once a year, if time and personnel permit, and more often if necessary.

The Legislative Auditor audits some components of state government each year in its Statewide Audit. This audit focuses on the state's financial statements in about 25 agencies and results in an opinion on the financial statements and other reports on internal control and legal compliance. The Legislative Auditor also audits some state agencies, commissions, and boards that are not covered in the Statewide Audit. Because of limited staff resources, each year the auditor uses a risk assessment to determine which agency audits to conduct. The risk assessment considers various criteria including the amount of financial activity, time since the last audit, significance of prior audit findings, and changes in the control environment. According to Legislative Auditor staff, state agencies or boards the size of the League are audited approximately once every three years.

State law directs the State Auditor to conduct annual audits of the League.

Laws and Policies that Govern the League

Minnesota statutes treat the Minnesota State High School League as a unit of local government and require that the State Auditor, not the Legislative Auditor, conduct an annual financial and compliance audit of its practices.[47] However, the State Auditor does not have as much latitude in designing the scope of its League audit as it does when conducting audits of other entities. State law requires that the State Auditor examine the aggregate totals of all revenues and expenditures for the current year and three previous years, showing the percentage and dollar change from the year before each of the four years.[48] The law requires that the following items be audited: student activities, membership dues, publications, registration of officials and judges, interest earned, automobile sales, and revenue from other sources such as medals, refunds, and reimbursements. Expenditures to be audited annually include items for the staff, board of directors, student activities, capital outlay, office and other supplies, and membership services. Also, extending the scope of the audit to include items not specified in statute must be agreed upon by the League's board of directors and the State Auditor.

The board's policy calls for the audit-finance committee to meet at least annually with the League's auditor to review the general financial condition and status of

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46 Minn. Stat. §3.971, subd. 1.

47 Minn. Stat. §6 gives the State Auditor responsibility for conducting financial audits of cities, counties, towns, school districts, and other governmental subdivisions. In a recent expansion of duties, the State Auditor must also audit the League's regional offices.

48 Minn. Stat. §128C.12.

the League.[49] Board policy also requires the League to develop a uniform audit document for the administrative regions and to set a standard date for completing them.[50]

We reviewed the State Auditor's audits of the League from 1988 through 1997. We noted that:

- **Since the early 1990s, the State Auditor has found no major problems with the League's financial practices.**

For example, in its 1997 audit of the League, the State Auditor's Office said that incurring expenses for refreshments in hospitality rooms at state tournaments did not serve a public purpose, and recommended that the League refrain from such expenditures.[51] We met with the staff of the State Auditor who told us that League audits were done in compliance with the law and with the full cooperation of the League.

As discussed in Chapter 1, over the last ten years the Legislature has passed laws to address the League's financial problems of the late 1980s. Consequently, Minnesota statutes are rather prescriptive in delineating what the State Auditor must examine when auditing the League. However, we think that:

- **The Legislature should consider giving the State Auditor's Office the same amount of flexibility in determining how to audit the League as it now has with local government entities.**

Because the State Auditor has documented only minor financial problems over the last few years, it may be appropriate for the Legislature to give the State Auditor's Office latitude to choose how best to audit the League. Similarly, although staff from both the State Auditor's Office and the League told us that state law requiring that all parties agree to the scope of its annual audit did not affect how the latest audit was done, we believe that such language compromises the independence of the State Auditor's Office and should be removed.

Budgeting and Accounting

Laws that Govern State Agencies

The Governor's Office and the Department of Finance review and control state agency budget requests to the Legislature. After the Legislature appropriates money, agencies are subject to the Department of Finance's accounting and expenditure controls.[52] The law also sets standards for establishing fees for state agencies, which must be approved by the Commissioner of Finance.

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49 High School League, *Policy Manual and Guidelines*, 16.

50 *Ibid.*, 31.

51 Office of the State Auditor, *Minnesota State High School League, Brooklyn Center, Minnesota, for the Year Ended July 31, 1997* (St. Paul, 1997), 19.

52 *Minn. Stat.* §16A.055.

Agencies must prepare and submit their budgets to the Department of Finance and the Legislature in the prescribed form by October 15 of each even-numbered year. The budget format must show expenditures for the two most recent fiscal years and estimates for the current fiscal year and each year of the upcoming biennium. Estimated expenditures must be classified by fund and type and may be subclassified by program and activity. Revenue estimates must show how they were made and the factors used, and be classified by programs, funds, and activities.[53] Major state agencies must submit performance information to complement budget requests.[54]

Laws and Policies that Govern the League

The League is not subject to most state budgeting and accounting laws.

Effective fiscal year 1999, the League must submit its budget to the Commissioner of Finance and the Legislature in the same manner as state agencies.[55] The League is subject to the Commissioner of Finance's rules and instructions regarding budget preparation, but the Department of Finance does not have control over the League's budget or how it spends its money. In addition, the Legislature does not directly appropriate any funds to the League.

Currently, the League's director of finance prepares budget worksheets for the executive director and associate directors' recommendations, showing revenues and expenditures for the three previous years when possible.[56] The finance committee of the board of directors reviews proposed changes and presents a preliminary budget to the full board. After the board's recommendations, staff prepare a final budget to present to the finance committee and board for their approval. Final budget adoption occurs at the June meeting. Adoption of the budget authorizes expenditure of funds when the expenditures precede actual approval of payment by the board. During the course of the League's fiscal year, the finance committee monitors how the League is adhering to its approved budget.[57]

The League's first experience submitting its budget to Finance will be in Fall 1998. At this time, it is not clear exactly what will be required of the League. The Department of Finance expects to release its latest set of budget instructions for state agencies and the League early this summer.

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53 *Minn. Stat.* §16A.10.

54 *Minn. Stat.* §15.91.

55 *Minn. Laws* (1Sp1997), ch. 4, art. 7, sec. 37.

56 High School League, *Policy Manual and Guidelines*, 24.

57 Ibid., 15.

Rulemaking and Contested Case Hearings

Laws that Govern State Agencies

Most state agencies are empowered by statute to adopt rules that clarify, implement, or enforce particular statutes.[58] In adopting rules, agencies are generally required to follow the procedures contained in the Administrative Procedure Act (APA), as summarized earlier in Figure 2.2.[59] Rules adopted according to these provisions have the force and effect of law.[60] These provisions include procedures to provide for public notice and input into agency rules and to ensure that proposed rules are needed and reasonable, consistent with statutes, within the agency's rulemaking authority, and in the appropriate legal form.[61]

In addition to prescribing the rulemaking process, the APA sets forth the procedures that state agencies must follow in conducting contested case proceedings.[62] Contested case proceedings are required when an agency with administrative or regulatory authority renders a decision that an affected party thinks is unfair. The APA requires that all parties, after reasonable notice, have the opportunity to air their grievance before an administrative law judge from the Office of Administrative Hearings. Parties have the right to testify and present evidence, and testimony is subject to cross examination. A hearing record must be maintained and a transcript must be provided if requested. At the conclusion of the hearing, the administrative law judge must issue a report with conclusions and recommendations. Parties have ten days to file exceptions to the law judge's report, after which the agency issues a final decision. Final agency decisions may be appealed to the courts.

The League is exempt from the Administrative Procedure Act.

Laws and Policies that Govern the League

The League is exempt from the rulemaking and contested case requirements of the APA. However, a 1997 law requires the League to ensure public notice of all eligibility rules and policies and to provide for public hearings if requested by 100 or more parents or guardians of students.[63] The hearing must be conducted by an administrative law judge from the Office of Administrative Hearings, by a person

58 Specifically, a rule is defined as, "every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure." See *Minn. Stat.* §14.02, subd. 4.

59 *Minn. Stat.* §14.

60 *Minn. Stat.* §14.38, subd. 1. Rules exempt from the rulemaking requirements of the Administrative Procedure Act also have the force and effect of law if they follow the provisions of *Minn. Stat.* §14.386 or if the statute authorizing rulemaking specifies that *Minn. Stat.* §14.386 does not apply.

61 While the Administrative Procedure Act is designed to provide public input and promote due process in agency rulemaking, it is not without problems. In our 1993 report on administrative rulemaking in Minnesota, we found that 81 percent of the rules that were adopted by state agencies were adopted without public hearings, and that the majority of the citizens that we surveyed said that they had insufficient input into the rulemaking process. Subsequently, the Legislature streamlined rulemaking procedures, provided for better public notice, and clarified ambiguities. See Office of the Legislative Auditor, *Administrative Rulemaking* (St. Paul, March 1993).

62 *Minn. Stat.* §§14.57-14.62.

63 *Minn. Laws* (1997), ch. 187, art. 4, sec. 6.

hired by the Office of Administrative Hearings, or by a person appointed by the Commissioner of Children, Families & Learning from a list maintained for that purpose. The law requires the person conducting the hearing to prepare a report evaluating the extent to which the League has shown that the proposed rule is needed and reasonable and the legality of the proposed rule. The law does not require the League to adopt the hearing officer's conclusions and recommendations.

Both the League's Representative Assembly and its board of directors adopt rules that regulate student participation in extracurricular activities--the assembly through its bylaws and the board through its policies that clarify and interpret bylaws. The League's authority to make rules for student eligibility in interscholastic activities was affirmed by the Minnesota Supreme Court in a 1970 decision, provided that the rules supported reasonable goals of education and were not "arbitrary or capricious."[64] We examined both rulemaking processes and found that:

- **Although the League adopts rules differently than state agencies, its rulemaking procedures generally promote public accountability.**

The League's rulemaking procedures allow for public input.

The League's principal rulemaking process is like a legislative process, with bylaws adopted by vote of a 90-member Representative Assembly. The League constitution requires that the Representative Assembly formulate bylaws for all activities in general and for each specific activity. Bylaws cover topics such as the addition of new activities, eligibility standards, season length, and the conduct of participants, coaches, and officials. Proposed amendments to the bylaws must be submitted to the League's executive director at least 30 days before a regularly scheduled meeting of the Representative Assembly. Amendments may be submitted by designated school representatives of five or more schools, any district or region committee, the board of directors, the officers of an activity association, or by action of the Representative Assembly.[65]

Unlike state agency rules, there is no requirement that the party submitting the proposed bylaw change include a statement of need and reasonableness. In practice, however, most proposed bylaw changes are accompanied by a brief statement explaining the rationale for the proposed change. The proposal cannot be passed until the next meeting of the assembly.

We reviewed the minutes from all Representative Assembly meetings between November 1993 and November 1997; we also attended the March 1998 meeting. We found that:

- **Most proposals to change League bylaws came from member schools.**

Between November 1993 and March 1998, 34 amendments to the League's bylaws were submitted. Eighteen of the proposals were submitted by five or more designated school representatives, nine were submitted by the board, four by activity associations, two by *ad hoc* committees created by the board, and one by

64 Brown v. Wells, 181 N.W. 2d 708 (1970).

65 High School League, *Constitution*, §215.

a region committee.[66] Most of the proposed changes dealt with season dates, the number of games per season, summer coaching and camps, student eligibility, and adding or deleting League activities.

A quorum of three-fourths of the Representative Assembly must be present for a vote to be taken. Two-thirds of those voting must approve an amendment to the bylaws for it to be passed.[67] Between 1993 and 1998, 16 proposed bylaw changes (47 percent) were approved by the necessary two-thirds of the delegates, 14 were not approved, and 4 were withdrawn or tabled.

The League constitution gives the League's 20-member board of directors general management responsibilities, including the authority to interpret the League's bylaws.[68] The board does this by issuing policy statements that it publishes along with the bylaws in the League's handbooks. Board policy permits the board to modify the contest rules of an activity, but not change the intent of any bylaw approved by the Representative Assembly.[69] For example, Bylaw 205 limits the type and value of awards that students may receive for participating in League activities and specifies that the restrictions do not apply to non-League activities. The board's policy in this area states that accepting an award for a sport not conducted by the League, such as bowling, boxing, or rodeo, would not make a student ineligible for League activities.[70]

We found that:

- **The public has less time and fewer opportunities to respond to proposed changes in League policies than it has to proposed changes in League bylaws.**

Policies that are adopted by the League's board of directors may be adopted within one month of initial proposal, allowing little time for public comment. The League's policy states that any policy considered for adoption by the board must appear on the discussion agenda at one of its regular meetings. After discussion at a board meeting, the proposed policy is placed on the board's action agenda for the next regularly scheduled board meeting and, if approved at that meeting, is effective the following day. Between meetings, individuals may submit written requests to appear before the board to discuss the issue. However, the board may bypass the discussion meeting and place an item directly on the action agenda if it notifies member schools and interested persons at least 30 days before final action.[71] In contrast, as we discussed earlier, bylaws cannot be adopted in fewer than four to eight months, depending at which meeting of the Representative Assembly they were proposed.

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66 The two bylaw changes proposed by *ad hoc* committees were actually changes to several bylaws voted on by the Representative Assembly as a package.

67 High School League, *Constitution*, §§213.00, 215.01.

68 High School League, *Constitution*, §211.02.

69 High School League, *Policy Manual and Guidelines*, 10.

70 Minnesota State High School League, *1997-98 Official Handbook* (Brooklyn Center, MN, 1997), 105.

71 *Ibid.*, 11.

As we discussed in Chapter 1, the League has made significant efforts in recent years to increase public input into its rulemaking procedures. It has created a student advisory committee, improved notification procedures, held informational meetings throughout the state, and adopted procedures for holding hearings on proposed changes to its bylaws. Yet, we noted that:

- **Despite the League's efforts, overall involvement by the public in rulemaking has been minimal.**

Although the League must hold a public hearing on its eligibility rules if requested by 100 or more parents or guardians of students, as of February 1998, the board had not received any requests. Also, attendance at area meetings and at the open forums held during the state wrestling and volleyball tournaments was sparse. Several area meetings had no public attendees, and none had more than six.

When we attended the March 1998 meeting of the Representative Assembly, we noted that several activity associations often had polled their membership to obtain their opinions on the various bylaw proposals under consideration prior to voting. However, there was no polling of student or parent organizations on their opinions about proposed bylaw changes. Given their lack of representation on the assembly and their poor attendance at League forums and area meetings, the League should continue to periodically survey students and parents to measure their support (or lack thereof) for proposed changes to League bylaws and policies. The League might also do more to encourage member schools to hold local informational meetings for parents and students. Not only might this type of information be useful during the rulemaking process, but it could also help buffer the League from both public and legislative criticism that may occur later in the process.

In general, we found that the League's rulemaking processes have been open and democratic. However:

- **The various documents that outline League rules are often unclear and contradict one another about whether a rule is a bylaw or a policy.**

League documents sometimes contradict one another.

We found ambiguities in how some responsibilities are divided between the board and the Representative Assembly and numerous inconsistencies in the League's handbooks. For example, the *1997-98 Official Handbook* states that rules adopted by the National Federation of State High School Associations are the official game rules for all activities, unless modified by the League. Neither the handbook nor the constitution specifies whether the Representative Assembly or the board is empowered to modify the National Federation rules. In 1993, the board adopted a policy modifying the official game rules of several sports by requiring participants to wear mouthguards. Although the board acted on the recommendation of a sports medicine advisory group, the policy met with widespread opposition from student athletes and their parents, and the board ultimately reversed itself and changed the mouthguard requirement to a recommendation. Staff members told us that, in hindsight, the board probably

should have taken the matter to the Representative Assembly rather than adopting it as a policy statement.

We also compared the League's rulebooks for 1996-97 and 1997-98 and looked at the League's Internet web site. We found several discrepancies and contradictions. Some discrepancies involved labeling certain provisions as bylaws one year and as policies the next, and *vice versa*. For example, Bylaw 303 in the League's *1996-97 Official League Handbook* outlines the League's fair-hearing procedure for student eligibility. Just as it had appeared in handbooks for the previous years, Bylaw 303.00, 2, C (3) required that the appealing party in a contested case send a certified check for $250 to the League with the request for a hearing. However, the League's *1997-98 Official League Handbook* deleted all references to the $250 and described the fair-hearing procedure as a board policy rather than a bylaw. The Representative Assembly did not vote to repeal this provision. The minutes of the board's August 1997 executive committee meeting indicate that it voted to delete the $250 fee, but the full board's minutes only indicate that the executive committee's action was discussed, not voted on.

Another example is the bylaw on ineligible players. Bylaw 305.01 in the *1996-97 Official League Handbook* provided for a one-year suspension of schools that, by mutual consent, allowed an ineligible player to compete. Bylaw 305.02 provided for forfeiture of games if a school willingly allowed an ineligible player to compete, Bylaw 305.03 provided for an additional nine-week penalty against the ineligible player with some exceptions, and Bylaw 305.04 permitted the board to levy additional penalties against the school if the violation was deliberate.[72] However, the League's *1997-98 Official League Handbook* contains only the one-year suspension provision (formerly Bylaw 305.01) and a portion of the player penalty provisions (formerly Bylaw 305.03), now numbered bylaw 304. The other parts of the ineligible player bylaws (formerly Bylaws 305.02 and 305.04) are now listed as "procedures."[73]

In other cases, we found inconsistencies among the League's different 1997-98 publications. What is defined as a bylaw in one publication may be described as a policy in another or *vice versa*, or be absent from a publication altogether. For example, Bylaw 502.00 in the *1997-98 Official League Handbook* limits the number of innings a baseball player can pitch in a three-day period.[74] In the League's *1997-98 Athletics Rules and Policies Manual*, this provision is not included in the bylaws section but is included in the policies section.[75] We found similar discrepancies for other sports as well as contradictions between the League's 1997-98 publications and the bylaws shown on the League's Internet website. We also found inconsistencies in how provisions of the League's constitution are numbered in its 1997-98 *Official League Handbook* and its Internet web site.

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72 Minnesota State High School League, *1996-97 Official Handbook* (Brooklyn Center, MN, 1996), 56.

73 High School League, *1997-98 Official Handbook*, 43.

74 *Ibid.*, 67.

75 Minnesota State High School League, *1997-98 Athletic Rules and Policies Manual* (Brooklyn Center, MN, 1997), 253.

While these contradictions may have little or no practical consequences for students, as they must adhere to all bylaws and policies regardless of their origin, these discrepancies can create confusion if someone wishes to change a bylaw or policy. Furthermore, such contradictions may create the perception that the League's rulemaking process is arbitrary. Currently, the board of directors is reviewing its policies to identify those that are obsolete or unclear as well as the format of the *Official League Handbook* to make it more user-friendly. As part of these reviews, we recommend that:

- **The board should carefully review its publications and Internet web site for consistency with the League's official bylaws and policies.**

As discussed earlier, the APA also sets forth procedures that state agencies must follow in hearing contested cases. State law does not prescribe a dispute resolution method for the Minnesota State High School League.[76] However, the League has established a policy for hearing disputes about student eligibility.[77] A student, parent, or guardian may appeal an eligibility decision by notifying the school principal within ten days of the date of mailing of the school's decision. Within ten days, the principal must convene a hearing panel of three to five members, including a member of the school board, a member of the school's administrative staff, and a member of the faculty. Alternatively, the school may elect to have the case heard by an independent hearing officer at the school's expense. The panel hears evidence, keeps a record of the hearing, and prepares written findings of facts and conclusions. The League's executive director may overrule the hearing panel's decision if the findings are inconsistent with the League's bylaws.

Students and parents file few eligibility appeals with the League.

A student, parent, or guardian may appeal the hearing panel's or executive director's decision to the League's board within ten days by filing a written notice of appeal to the board, the executive director, and the school principal. The board must schedule a hearing before an independent hearing officer within ten days. The student may present evidence and testimony and is entitled to representation by legal counsel. The hearing officer must issue a written decision within four days of the hearing. The full board must review the hearing officer's report and issue a final decision at its next regularly scheduled meeting.

We reviewed files of eligibility hearings held at schools and those appealed to the board. We found that:

- **There were few appeals of student eligibility decisions; most of the appeals involved substance abuse and most were denied.**

Between August 1997 and early March 1998, there were 13 appeals by students of eligibility suspensions. Students appealed six school hearing panel decisions to the League's board. Nine of the 13 cases involved substance abuse, usually

76 *Minn. Stat.* §128C.08 does specifically authorize individual schools or the League's board of directors to disqualify a person from interscholastic activities for assaulting an official. In such cases, the alleged offender is entitled to an informal hearing.

77 High School League, *Policy Manual and Guidelines*, 58, 59.

alcohol or smoking. Two of the suspensions were reversed, one for lack of evidence and one after the student obtained a temporary injunction from a court.[78] We also reviewed reports filed by the League with the Education Committees of the House and Senate in the three academic years prior to 1997-98 when the appealing party had to send a certified check for $250 to the League with the request for a hearing. We found that between one and three students filed eligibility appeals with the board during each of those years.[79]

LEAGUE ACTIVITIES NOT SUBJECT TO LAWS ON PUBLIC ENTITIES

Figure 2.3 shows two areas where the League is not subject to the legal mandates that apply to state agencies or local governments. These include procurement and professional and technical contracting and tort law.

Figure 2.3: Laws Governing State Agencies that Do Not Apply to the Minnesota State High School League

Procurement and Contracting

The Commissioner of Administration oversees or performs most purchasing and contracting.

Requests for bids or proposals must be solicited for all purchases over $15,000 and all contracts over $10,000.

Tort Claims

The state's responsibility for tort claims is limited.

Procurement and Contracting

Laws that Govern State Agencies

State law sets forth various requirements to help ensure that state agencies spend public money efficiently and effectively, and that the purchasing process is open to the public. The Commissioner of Administration oversees or performs most purchasing for state agencies.[80] Depending upon the dollar amount involved, purchases of supplies, materials, equipment, and utility services (where appropriate) must be made competitively. For example, Department of Administration policies require that at least one price quote be obtained for purchases up to $1,500, at least two quotes for purchases from $1,500 to $5,000, and three or more written bids for purchases from $5,000 to $15,000. For

78 This case involved a student who was declared ineligible after playing junior hockey in Iowa and then transferring to a Minnesota school. The board reversed the suspension because the student's coach had given him incorrect information.

79 Letters from the Minnesota State High School League to the Chairs of the House and Senate Education Committees, January 19, 1996, January 17, 1997, and January 26, 1998.

80 *Minn. Stat.* §16B.06.

purchases over $15,000, statutes require that the Commissioner of Administration solicit requests for bids by advertising the contract's availability in a newspaper or trade journal not less than seven days before the final day for submitting bids.[81] Unless certified to do their own purchasing, state agencies must go through the Department of Administration. In addition, state agencies must adhere to certain requirements that encourage purchasing from small businesses and businesses owned by women and minorities.

For the most part, current state law requires that purchases be made from the lowest responsible bidder.[82] However, effective July 1, 1998, purchasing decisions must be based on "best value," which includes at a minimum, price considerations, but may also include environmental considerations, quality, and vendor performance.[83]

The Commissioner of Administration also oversees state agency contracting for professional/technical services.[84] As with procurement, requirements for public involvement vary depending upon the contract's size. For example, small contracts that result in any one firm or individual receiving $500 or less over the course of the fiscal year may be simply outlined in an "annual plan" that is approved by the Department of Administration. In contrast, agencies must certify, among other things, how they will publicize the availability of contracts over $5,000. For contracts greater than $10,000, agencies must submit a request for proposal to the Commissioner of Administration for approval. Contracts generally may not exceed five years, including extensions, and agencies are required to evaluate contractors' performance.

Policies that Govern the League

The League is not required to adhere to state laws regarding procurement or contracting for professional/technical services.[85] We examined League policies in these areas and found that:

- **The League's policies for purchasing goods and contracting for professional/technical services provide few safeguards to help ensure public accountability.**

League policies do not require competitive bidding or price comparisons.

For example, the board's procurement policy indicates that its audit-finance committee is responsible for reviewing bills and monitoring warrants. Purchase orders are approved by the League's associate director for business affairs and the executive director, but purchase orders do not have to be used for all items.

81 *Minn. Stat.* §16B.07, subd. 3. Legislation passed in 1998 raises the dollar value of purchases that require a request for bids from $15,000 to $25,000 effective July 1, 1998. See *Minn. Laws* (1998), ch. 386.

82 *Minn. Stat.* §16B.07, subd. 1.

83 *Minn. Laws* (1998), ch. 386.

84 *Minn. Stat.* §16B.17 and Department of Administration, *Contracts Manual* (St. Paul, 1994).

85 As noted earlier, after its most recent audit, the State Auditor's Office requested an Attorney General's opinion on several issues, including whether the League is subject to the uniform municipal contracting law set forth in *Minn. Stat.* §471.345. Letter from Judith H. Dutcher, State Auditor, to Hubert H. Humphrey III, Attorney General, February 13, 1998.

purchased.[86] There are no requirements for obtaining competitive bids or proposals or for periodically reviewing price quotes. Likewise, League policies set forth little guidance as to how or when to contract for professional/technical services. Board policy indicates that the board must ratify all requests for consultant contracts, although it may grant the executive director authority to act on its behalf between meetings.[87]

During fiscal year 1997, the League spent about $380,000 with five vendors for publications, T-shirts, and other goods, and at least another $370,000 contracting for professional services from seven other vendors, most often without the benefit of requests for bids or public advertising. According to League staff, the League has done business with some vendors for many years, and it has established a good working relationship that it believes precludes the necessity of competitive bidding. For example, the League has purchased tournament awards from one company for over 25 years. The League has purchased major printing services from the same three vendors for more than seven years.

The League's staff have periodically obtained price quotes for low-cost printing jobs (typically $10,000 or less) from different vendors, but larger purchases, as well as professional/ technical contracts, have generally been entered into without obtaining competitive bids or proposals. We think that:

- **The League should adopt policies to obtain competitive bids or proposals for purchases or contracts above a certain dollar threshold and to periodically review preferred vendor contracts.**

We noted that the League has solicited proposals from five vendors to expand its Internet web site and appears to be moving in a deliberate, well-studied manner. The League should consider using this experience to develop overall procurement and contracting policies that delineate the various factors, including price, that should be considered before making major procurement or contracting decisions.

Tort Liability

Laws that Govern State Agencies

Minnesota law limits the liability of state agencies and employees of the state in tort claims, which are claims for damages or injuries done willfully or negligently, but not involving a breach of contract.[88]

Policies that Govern the League

State limits on tort claims do not apply to the League or its employees, but all employees are covered under the state's workers' compensation laws, up to statutory limits. The League requires liability insurance coverage for itself and its region committees.[89] The League has a $1 million liability insurance policy for

86 High School League, *Policy Manual and Guidelines*, 24a.

87 *Ibid.*, 51.

88 *Minn. Stat.* §§3.732, 3.736.

89 High School League, *Policy Manual and Guidelines*, 64-65.

"errors and omissions." In addition, board members are covered by medical insurance for accidents during travel on League business. The League has a catastrophic medical insurance policy with a lifetime cap of $3 million for students competing in League athletic, fine arts, and cheerleading activities. The policy has a $25,000 deductible provision, except for injuries occurring to state tournament participants where there is no deductible.

SUMMARY

Although the High School League is not a state agency, the Legislature has, over the years, required the League to adhere to some of the laws that govern state agencies. We found that state law sometimes requires the League to conform with requirements of state boards or agencies, but in other instances the League may establish policies of its own. The League is subject to the following laws that govern state agencies: appointing and compensating governing board members, reimbursing board members' and staff expenses, holding open meetings, and complying with the Data Practices Act. In addition, the League is subject to hiring, ethical practices, auditing, budgeting and accounting, and rulemaking laws that are different from those that govern state agencies. Finally, it is not subject to state procurement or contracting laws or statutory limits on tort claims.

For the most part, the League has complied with state requirements and we think that most of the abuses that subjected the League to criticism in the past no longer exist. We recommend that the Legislature consider giving the State Auditor's Office more flexibility to conduct its audits of the League. Also, we think the League could improve accountability if it developed better procurement and contracting policies, such as requiring competitive bids or proposals for purchases and contracts over a certain threshold. We also think the League could reduce suspicions about its fairness if it removed inconsistencies in its handbooks and manuals and clarified which requirements are bylaws and which are policies. Finally, we think that the Legislature could help the League's board function more smoothly if it required the terms of all board members, including the Governor's appointees, to begin August 1.

Alternative Structures

CHAPTER 3

In previous chapters, we discussed various laws that the Legislature has adopted to increase the Minnesota State High School League's accountability to the public. We also reviewed subsequent changes in the League's practices. In this chapter, we discuss whether additional reforms are needed in the League's overall structure. We address the following questions:

- **Are changes needed to make the League more accountable to the Legislature, students, parents, member schools, and the public?**
- **Should some or all League functions be incorporated into the activities of existing state agencies?**
- **What alternatives exist to the League's current status as a nonprofit corporation and voluntary association of high schools?**

To answer these questions, we obtained data from four main sources. First, we reviewed how other states have organized similar activities. Second, we talked with staff from state agencies that have some oversight responsibilities regarding the League's operations. Third, we contacted representatives from 24 educational organizations to learn about the League's relationship with students, parents, schools, and the general public. Finally, we reviewed data on contested case hearings held by schools and the League's board of directors.

Major changes to the League's structure are not needed.

Overall, we do not think that major changes are needed to make the League more accountable to the public. The Legislature has enacted significant reforms over the last 10 years and several League practices have changed. However, because the League's main responsibilities are governmental in nature--regulating student participation in certain extracurricular activities--we think that the state has an obligation to provide strong public oversight. The Department of Children, Families & Learning must improve its monitoring of League activities, and we recommend that the Legislature consider strengthening the department's role. We recommend that the League more clearly define the roles and responsibilities of their recently appointed ombudspersons and publicize their availability. To increase their independence, we think that the League should also have the Representative Assembly appoint or elect the ombudspersons.

ALTERNATIVE ORGANIZATIONAL APPROACHES

To help us understand the League's relationship with its constituents, we examined how high school leagues are organized in 21 other states, focusing on the relationship between the association and the state. Usually, the association is a nonprofit, voluntary association of schools, although in Vermont and Maine the principals' associations run the athletics programs. In Texas, the association is administratively part of the University of Texas and has a board of directors that is appointed by the state's education department.

As shown in Figure 3.1, we found that:

- **Seventeen states out of the 22 that we examined have little or no direct relationship between their athletic associations and state government.**

At most, someone from the state's education department or a member of the state legislature is a member of the association's governing board. On the other hand, we identified four states with substantial, direct oversight of their associations: Texas, Iowa, Washington, and Florida. Minnesota is between these two groups.

Figure 3.1: State Oversight of Athletic or Activity Associations

States with Little or No Oversight	States with Limited Oversight	States with Substantial Oversight
California	Minnesota	Florida
Colorado		Iowa
Illinois		Texas
Maine		Washington
Massachusetts		
Michigan		
Nebraska		
New Hampshire		
New Mexico		
North Carolina		
Ohio		
Oregon		
Pennsylvania		
Tennessee		
Vermont		
Wisconsin		
Wyoming		

NOTE: "Little oversight" means that, at most, a member of the state's education department or the state legislature is on the association's governing board. "Limited oversight" means that, while some of the association's activities are limited by state law, its eligibility rules are not. "Substantial oversight" means that most of the association's activities and rules are subject to state review and, in some instances, state approval.

SOURCE: Office of the Legislative Auditor, 1998.

Most states provide little or no oversight of their athletic associations.

Iowa has a free-standing, nonprofit athletics association, but its activities are subject to review by the state's education department. The association must provide the education department with its bylaws, membership lists, policies, minutes of all meetings, proposed changes to bylaws, detailed reports of salaries and expenses of all employees, and other materials related to the association's operation. A student who has a complaint about a rule can appeal to an executive committee of the athletic association and, finally, to the state education director. A student or parent can also ask for the services of the state's ombudsperson to help with a complaint.

All rules on interscholastic activities and student eligibility in Iowa are promulgated by the state's education department through the normal rulemaking process. The high school athletics association administers the rules and programs under an agreement with the education department. This arrangement is the result of a 1972 court case in which the Iowa Supreme Court ruled that the state athletics association lacked the authority to adopt student eligibility rules and that school boards and the State Board of Education could not delegate their rulemaking responsibilities to another organization.[1] The court made this finding despite the fact that a member of the State Board of Education served on the board of the athletic association and that state law gave permission for school boards to join the athletics association.

Washington also has a free-standing, nonprofit athletics association. All of its rules and policies on student participation in any interschool activity, though, are subject to review and approval by the State Board of Education.[2] The association must also submit an annual report to the board on student appeal determinations, assets, financial receipts, and disbursements.

In 1997, Florida established a new governing board for its athletic association as a result of recommendations from an advisory group and criticism of the association by legislators who believed that a broader base of representation was needed to make the association more responsive to the public.[3] The Florida Legislature adopted the association's bylaws into state law and stipulated that the current athletics association could continue in that role if it agreed to operate under the statutory bylaws. If the association fails to do that, the Commissioner of Education is to designate another nonprofit organization to govern athletics, subject to approval by the State Board of Education. The Legislature divided the association's administrative and legislative functions by requiring the association to have a legislative assembly to consider bylaw changes. The law also requires the association to have a separate public liaison advisory committee with representatives from educational groups, the Legislature, the press, and the public to ensure public input into the decision-making process. The liaison committee must hold public hearings and conduct an annual evaluation of the association as a whole, presenting its findings and recommendations to the Commissioner of Education and legislative committees.

1 *Bunger v. Iowa High School Athletic Association*, 197 N.W. 2d, 555 (1972). The Iowa Supreme Court ruling was opposite of a 1970 Minnesota Supreme Court ruling that held that a rule adopted by the Minnesota State High School League was valid because it fostered educational goals and met the standard of not being arbitrary or capricious. *Brown v. Wells*, 181 N.W. 2d, 708 (1970).

2 *Revised Code of Washington*, 28a.600.200.

3 *Florida Laws* (1997), ch. 97-53.

In addition to looking at their structure, we examined how other states change their bylaws or rules. We found that:

- **Like Minnesota, associations in most states have a legislative assembly that meets at least once a year to vote on changes to the constitution or bylaws and to elect officers.**

Most often, assembly members are elected by regional, activity, or educational associations. A few states though, including Illinois, Massachusetts, and New Mexico, allow all schools in their association to vote on every change to their constitution or bylaws.

However the bylaws are enacted or modified, executive boards typically have substantial authority to interpret them or to issue additional rules to carry out the bylaws. Boards may also have broad authority to suspend the application of a bylaw or rule in special circumstances, such as on questions of students' eligibility.

In addition to the organizational arrangements that are found in other states, there are various alternative structures that the Minnesota Legislature could impose on the Minnesota State High School League to address issues of public accountability. The least intrusive ways to increase accountability may be for the Legislature to pass laws that simply improve state oversight or that expand the League's Representative Assembly to include student and parent representation. Other, more drastic reforms would alter the structure of the League itself. For example, the Legislature could pass legislation that directs the Department of Children, Families & Learning to staff the League. This would retain the League's grassroots connection to schools, while bringing its internal operations under state control. Legislation could also be passed that would permit the Governor to appoint all board members. Combining this change with the former change would make the League a state agency. All League operations would be subject to legislative review, and funds could be placed in a dedicated fund and appropriated biennially.

ARE CHANGES NEEDED?

We contacted 24 educational organizations that represent schools, board members, staff, students, and parents to ascertain how satisfied they are with League activities and their opportunities for involvement. We found that:

- **For the most part, League constituents are pleased with the League and its activities.**

Many of the organizations that we talked with are already involved in the League's rulemaking process. We heard only a few complaints about the League or its activities. Almost all of the organizations that had an opinion about the League said that it was doing a good job in organizing events and meeting the needs of schools and students. They also indicated that they had adequate input into rulemaking.

In 1995 the League surveyed a sample of students from around the state who participated in extracurricular activities. Using separate questionnaires for fine arts and athletics, students were asked about the benefits of participating in extracurricular activities; the relationship among coaches, parents, and students; League rules, seasons and the number of contests; sportsmanship; specialization; and chemical health. The surveys revealed little dissatisfaction with League-related issues.[4]

League constituents are generally satisfied.

As part of its 1998 strategic planning process, the League has been holding focus groups throughout the state. According to the focus groups' facilitator, the groups, which included students, school board members, coaches, and principals, among others, expressed very little dissatisfaction with how the League was doing its job.

Finally, we found that few students or parents challenge the League's bylaws as they relate to student eligibility. As discussed in Chapter 2, even though about 160,000 students take part in League-regulated activities each year, only 13 contested case hearings regarding student eligibility were held at the school level, and only 6 of these cases were appealed to the League's board of directors during the first 7 months of the 1997-98 school year. The number of cases that were appealed to the board of directors was even lower in previous years. As noted in Chapter 2, board policy previously required that parties appealing eligibility decisions to the board of directors send a check for $250 with their request for a hearing.

Because there does not appear to be widespread dissatisfaction with the League and because we found no major problems with the League's accountability to the public:

- **We do not think that it is necessary for the Legislature to make major changes in the League's organizational structure at this time.**

The League is already subject to several public accountability laws, and we found only one area of noncompliance. Even though the League's rulemaking process is autonomous, we found that there were ample opportunities for public input.

Nevertheless, because the League's major activities are essentially governmental--regulating student participation in certain extracurricular activitie--we think that public oversight, especially in program areas, is warranted. Two state agencies already have some direct oversight responsibilities--the Department of Children, Families & Learning and the State Auditor's Office. Two other groups have some indirect oversight. The League is required to file compensation reports with the Legislative Commission on Employee Relations on July 1 of every odd-numbered year. Beginning in 1998, the League must submit its budget to the Governor and Legislature in the same manner and form as state agencies, as set forth by the Department of Finance.

We noted that the State Auditor's Office has consistently fulfilled its statutory role in overseeing financial matters. However, we found that:

4 Minnesota State High School League, *Listening to Students* (Brooklyn Center, MN, 1995).

- **There is no record that the Department of Children, Families & Learning has reviewed League activities as required by law.**

Minnesota statutes require that the Commissioner obtain and review each year the following information about the League: a summary of the State Auditor's financial and compliance audit, including information on staff compensation and expenses; a list of complaints filed with and lawsuits filed against the League, and their disposition; an explanation of the executive director's performance review; information on how the League has implemented various personnel policies; and an evaluation of any proposed changes in the League's policies.[5] In addition, the Commissioner may recommend to the Legislature whether any legislation is needed. There is no record that the department has reviewed these data for the last several years. Staff from the Department of Children, Families & Learning told us that the department has just recently begun to develop an oversight activity related to the League within the department's monitoring and compliance unit and is currently reviewing the required information about the League. In the past, the department has worked with the League to jointly develop a manual on Title IX compliance for athletics and to clarify the Title IX status of such activities as dance team.

Public oversight is needed because the League's major activities are governmental in nature.

We think that it would be useful to the League, the Legislature, and the general public if the Department of Children, Families & Learning would exercise its existing oversight responsibilities regarding the League. Not only would this afford the public some degree of assurance that students' well-being, not just schools' extracurricular programs, are being considered, but it could also help improve the League's relationship with the Legislature. In fact, we think that the Legislature should expand the department's role to include written reports to the Legislature that include a thorough review of proposed changes to the League's bylaws and policies to ensure compatibility with the primary focus of schools--education--and their impact on students and their families. Although Minnesota statutes currently require the department to evaluate any proposed changes in League policy, we recommend that:

- **The Legislature should expand the Department of Children, Families & Learning's oversight responsibilities to include an annual, written review of League activities and a nonbinding review of all proposed bylaw and policy changes.**

Copies of the department's reviews should be made available to the Representative Assembly and the board of directors before they change the League's bylaws and policies. This is not a new or unique idea. As noted earlier, we found that at least four other states have their education departments exercising direct oversight over their athletic associations and their rules. Until 1991, state law required that the department prepare written reports annually on the League's activities. The department did not file any written reports in 1988 and 1989, and submitted only a perfunctory one in 1990. The Legislature subsequently reduced the department's responsibilities by no longer requiring an annual written report.[6]

5 *Minn. Stat.* §128C.20.

6 *Minn. Laws* (1991), ch. 265, art. 11, sec. 14.

Also, we recommend that:

- **The Legislature should consider giving the Department of Children, Families & Learning the explicit statutory authority to examine League-related issues when warranted.**

The Department of Children, Families & Learning's oversight role should be expanded.

Currently, statutes limit the department's role to reviewing certain information that the department is required to obtain from the League. Although state law permits the department to recommend whether League activities warrant legislation, the department does not have the express authority to initiate its own examinations. Although we do not think that the Department of Children, Families & Learning should investigate individual student complaints, the department should be able to examine issues and trends that affect students' overall education. For example, because no state agency currently reviews the overall impact of current bylaws and policies, the department should be able to periodically review existing bylaws and policies for their impact on students and their education. As noted in Chapters 1 and 2, students and parents have no direct membership in the League's Representative Assembly, and there are currently no avenues available for students and parents to directly object to existing bylaws. Recent legislative and League reforms have focused on *proposed* changes to eligibility bylaws and policies.

Finally, we recommend that:

- **The League should better define the roles and responsibilities of its ombudspersons and publicize their availability.**

Since 1997, the League has retained the services of three individuals to act as ombudspersons for people who have concerns about bylaws, policies, or other issues and who feel that their concerns have not received proper attention from the League's office or staff. However, the ombudsperson's role is limited to advocacy of a person's concerns to the League's executive director and board president.[7] The League does not give specific authority to its ombudsperson to investigate an issue such as a student's eligibility or to advocate on the behalf of parents and students before the Representative Assembly.

Also, to be effective, we think that the ombudsperson should function as independently from the League as possible. To this end, we think that the League should have its Representative Assembly either elect or appoint individuals to this office for a specified period of time (for example, four years).[8] Not only would this give the ombudspersons more independence to investigate League issues, especially those that concern decisions made by League staff or its board of directors, but it would also enhance their level of visibility and importance within the League.

There are nine ombudspersons or offices in state government, including ones for agriculture, crime victims, corrections, taxpayers' rights, small businesses for pollution regulations, mental health and mental retardation, families of color for child protection and out-of-home placement, nursing home residents, and persons

7 High School League. *Policy Manual and Guidelines*, 9.

8 This would require changing the League's constitution.

in state-managed health care plans. Almost all of these ombudspersons can investigate citizen complaints and some can initiate an investigation without waiting for a citizen to complain. Most can advocate on behalf of citizens in government proceedings or can try to solve disputes through mediation. Some ombudspersons have subpoena powers and have access to information that might otherwise be confidential.

The League should publicize the availability of its ombudspersons.

Finally, regardless of how the ombudspersons are selected, the League needs to improve how it publicizes their availability. Unlike state agency ombudspersons, the names, addresses, and telephone numbers of the League's ombudspersons are not available on the its Internet web site or in its publications. A person wishing to contact one must call the League's office to get the information. To date, the League has not had anyone inquire about or use its ombudspersons.

SUMMARY

We found that major changes in the League's overall structure are not needed at this time. The League is already subject to many public accountability laws. While the League's rulemaking process remains autonomous, we think that there are ample opportunities for public input. Nevertheless, because public schools have delegated their authority to regulate student participation in extracurricular activities to the League, public oversight is warranted. We found that programmatic oversight of League activities was lacking. We recommend that the Department of Children, Families & Learning improve its oversight and that the Legislature consider strengthening the department's role. Also, we recommend that the League more clearly define the roles and responsibilities of its ombudspersons and make them more accessible to the public. To provide greater independence, the League should have its Representative Assembly appoint or elect the ombudspersons rather than having them hired by League staff.

MINNESOTA STATE HIGH SCHOOL LEAGUE

David V. Stead, Executive Director
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June 8, 1998

Mr. James Nobles
Office of the Legislative Auditor
State of Minnesota
First Floor
Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

RE: Minnesota State High School League Report

Dear Mr. Nobles:

The Board of Directors of the Minnesota State High School League has now had the opportunity to review the final revised draft of the report of the Legislative Auditor on the League. The report, in our opinion, represents a significant milestone in the League's ongoing development. The report reflects years of work by dedicated board volunteers, committee members, school officials, principals, coaches, activity directors, not to mention parents and students.

We find it significant that the Legislative Auditor recognizes that the League is a large grass roots organization. The report accurately documents the League's efforts to increase student and parent involvement in League activities. The report confirms the long-held Board belief that League constituents are pleased with the League and its activities. Finally, we join in the Legislative Auditor's position that the League's organizational structure is sound and should not be modified by the Legislature.

Obviously, the League is a dynamic organization which can always benefit from improvement. Several suggestions contained in the Legislative Auditor's report should be adopted. The Legislative Auditor suggests that all Board members begin their terms on August 1. This is a necessary and appropriate fine-tuning. In fact, the League requested such legislation in the 1998 legislative session. The proposed change on auditing by the State Auditor is, most probably, an appropriate suggestion which should be adopted by the legislature.

The Board is particularly satisfied with the Legislative Auditor's findings on rule making. The Legislative Auditor found that the League's rule-making procedures generally promote public accountability. This critical finding supports the assertion by many League supporters that its current rule-making status must be maintained. We are very pleased with this finding. Similarly, the suggestion that bylaws and rules could benefit from additional clarity is an appropriate finding. In fact, discussions have taken place with key legislators and the Revisor of Statutes with a goal of making the rules better for school officials, parents and students. It is hopeful that an improvement plan could be completed in the near future.

The remaining recommendations of the Legislative Auditor seek to enhance League operation. Improvement of the Internet website, ombudsman program, and bidding procedures are internal matters. The suggestions of the Legislative Auditor will become a useful tool for the Board in

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evaluating operations, practices and procedures. It is our expectation that improvements will result.

Finally, the Legislative Auditor has suggested strengthening the relationship between the Department of Children, Families and Learning and the League. To be sure, this relationship has been somewhat murky in the past. The current statutory scheme for this relationship has not been fully utilized. We look forward to discussions with the Department and policymakers on this aspect of your report. Hopefully, the resources, expertise and input of the Department can assist the League in achieving its mission for Minnesota students.

Overall, we think this report is a very positive assessment of the League and its activities. These accomplishments, however, came about as a result of the commitment of volunteer members on our Board, staff, and the thousands of other individuals committed to students throughout Minnesota. In addition, we would like to thank you and your staff for their work on this project. The independence and professionalism of your office is both evident and appreciated.

Sincerely,

Becky Montgomery
President, MSHSL Board of Directors

bm:jsw

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June 8, 1998

Roger Brooks
Deputy Legislative Auditor
658 Cedar Street
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Dear Mr. Brooks:

Thank you for the opportunity to review and comment on the Minnesota State High School League (League) final report as issued by your office. We believe that the League provides excellent opportunities for thousands of Minnesota students.

Overall, the report appears thorough, well researched, and informative. We are in support of the general findings and conclusions noted in the report and stand ready to implement any of the recommendations involving our agency if authorized by the Legislature.

Specifically, we concur with the statement confirming the existing oversight responsibilities of Minnesota Department of Children, Families & Learning (CFL) with regard to the League. Further, we support the expansion of our oversight role to include the publication of an annual written review of League activities and a non-binding review of all proposed bylaws and policy changes. As noted in your report, the task of obtaining and reviewing information about the League as mandated by M.S. 128C.20 has been assigned to our Division of Monitoring and Compliance beginning this year. A written report will be generated by this office upon completion of its review.

We also support the recommendation granting CFL explicit statutory authority to examine League-related issues when warranted. As noted in the report, the Division of Monitoring and Compliance already has an established relationship with the League having collaborated with the League on such activities as the development of a manual on Title IX compliance for athletics and the clarification of the Title IX status of such activities as danceline. We can take on this role utilizing existing resources.

In summary, the Minnesota Department of Children, Families & Learning is supportive of the recommendations contained in the Legislative Auditor's Program Evaluation Report on the Minnesota State High School League and is prepared to implement any and all of the activities contained therein using existing resources and expertise.

Thank you for the opportunity to respond to this report.

Sincerely,

Robert J. Wedl
Commissioner

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